

Quarterly Report
of the
ATTORNEY GENERAL
of
ALABAMA



For The Period
From April 1, 1959
Through June 30, 1959
VOLUME 95

MacDONALD GALLION, Attorney General



1960

QUARTERLY REPORT
of the
ATTORNEY GENERAL

ALABAMA

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Volume No. 95

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1959, through June 30, 1959, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD D. GALLION,
Attorney General.

MacDONALD GALLION
Attorney General

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Administrative Assistant

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Assistant Attorney General Assigned to the Department of
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George O. Miller, Jr.

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Revenue

Herbert I. Burson, Jr.
William H. Burton, Jr.
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James R. Payne
H. Grady Tiller

OPINIONS

April 22, 1959

Hon. Thos. J. Baber
Judge of Probate
Cleburne County
Heflin, Alabama

Counties—Funds—Social Security.

County's matching Social Security contributions shall be made from the same funds from which the compensation of its employees is paid.

Opinion by Assistant Attorney General Mentz.

Dear Sir:

Your request for an official opinion bearing the date of April 6, 1959, is as follows:

"I respectfully request an opinion from you as to the following question:

"Is it permissible for the matching contributions made by the county under the provisions of the Social Security Act to be made from the same funds from which the various county employees are paid their salaries, or do the contributions made by the county have to be paid from the general fund?"

Resolution Relating to Federal Old-Age and Survivors Insurance, adopted by the Court of County Commissioners of Cleburne County, Alabama, on March 27, 1951, which is a part of the State-County Agreement entered into by said County and the State Agency for Administration of Social Security Act for the purpose of enabling said County to participate in the Federal-State Old-Age and Survivors Insurance System Agreement, contains the following paragraph:

"3. That, under this resolution, there is hereby required, and henceforth at the times and in the manner provided by law required, that there be made regularly an appropriation (or appropriations) from funds available to be appropriated for salaries, wages, and/or personal compensation from general and/or special funds derived from ad valorem or other sources, sums sufficient to pay promptly, at the time and in the manner provided by law, the tax imposed on the County as employer under the conditions imposed by said Title II of said Social Security Act and Acts of the Alabama Legislature conforming thereto, and to the extent such tax accrues against said employer (the County) shall also be transmitted quarterly and at

the same time the tax on the officers and employees subject thereto is transmitted to the lawfully designated State Agency."

In a letter dated March 1, 1951, to Honorable John C. White, Secretary, Association of County Commissioners, Montgomery, Alabama, this office stated that, with respect to social security contributions for employees who work for county officers who are on a fee basis, the rule to be followed is that the fund from which the employee's compensation is paid shall be the fund from which the matching contribution is made. Thus, where a county officer on a fee basis employs clerks, stenographers and other employees who are paid from funds received as fees, the county officer should pay from his fees the matching social security contribution; whereas, if at any time there are employees paid by the county itself who are working for an officer who is on a fee basis, the county itself will pay the matching contribution.

In keeping with the provisions of the cited resolution and the reasoning of the foregoing letter, it is my opinion that the matching contributions, made by Cleburne County under the provisions of the Social Security Act, shall be made from the same County funds from which the salaries or compensation of its various county employees are paid.

Very truly yours,

MacDONALD GALLION
Attorney General

April 30, 1959

Hon. Walter D. Ritch
Chairman

Marion County Board of Revenue
Hamilton, Alabama

Ad Valorem Tax—Exemptions—Counties

The Marion County Board of Revenue cannot exempt from ad valorem taxation the re-pressuring or compressor station of gas transmission company, same not being within the purview of Title 51, Section 3, as amended, Code of Alabama 1940.

Opinion by Assistant Attorney General Tiller

Dear Sir:

Your request for an official opinion bearing date of April 21, 1959, is as follows:

"As you probably know, Tennessee Gas Transmission Company put a large pipe line through Marion County in 1958. At this time they are contemplating the construction of a re-pressuring or compressor station in this general area.

"My question is this: Can the Marion County Board of Revenue, under Title 51, Section 3, as amended, exempt the pipe line company from taxes assessed for all County purposes except school and school district purposes on such re-pressuring or compressor station?"

Your question is answered in the negative. The reading of Title 51, Section 3, as amended, Code of Alabama 1940, clearly shows that the Tennessee Gas Transmission Company does not bring itself within the purview of said Section. It is obvious that the pipe line company is engaged in transportation, and the building or construction of a compressor station is but for the furtherance of its business of transporting gas. — *Southern Natural Gas Co. v. State*, 261 Ala. 222, 73 So.2d 731. The engaging in the business of transportation is not one of the exempt categories set out in Section 3, *supra*. We must, therefore, conclude that said corporation does not bring itself within the purview of said Section 3 and that, therefore, the Marion County Board of Revenue does not have jurisdiction to exempt said pipe line company from ad valorem tax on its re-pressuring or compressor station.

Very truly yours,

MacDONALD GALLION
Attorney General

May 1, 1959

Honorable Wiley Hickman
Judge of Probate
Etowah County
Gadsden, Alabama

Deeds—Filing Tax

Where property is conveyed to John Smith, individually, and he, in turn, being joined by his wife conveys to himself and his wife with the right of survivorship, the deed tax under Title 51, Section 618, as amended, Code of Alabama 1940 would attach only to the undivided one-half interest acquired by Sara Smith.

The tax is based upon and measured by the value of all property within this State conveyed by such instrument.

Where John Smith and his wife, Sara Smith, own real estate jointly and which they, in turn, conveyed to themselves with the right of survivorship, there would be no deed tax due.

Opinion by Assistant Attorney General Tiller.

Dear Sir:

Your request for an official opinion bearing date of April 14, 1959 is as follows:

"Subject: Title 51, Section 618, Deeds, Bill of Sale, etc.

"1. John Smith owns real estate individually which was conveyed to him through simple warranty deed.

"2. John Smith and Wife, Sara Smith, execute a deed with the right of survivorship clause to John Smith and wife, Sara Smith, for a stipulated consideration of ten dollars (\$10.00).

"3. Would deed tax attach under subject Title and Section?

"4. If so, would deed tax attach on the stipulated consideration of ten dollars (\$10.00) or would deed tax attach on a reasonable market value of the property being conveyed and assuming a reasonable market value of the property to be ten thousand dollars (\$10,000.00)?

"5. John Smith and wife, Sara Smith, own real estate jointly which was conveyed to them through simple warranty deed.

"What would be the answers to questions 3 and 4 under the terms of the conditions as set forth in question or paragraph 2?

"The main question involved 'Does a deed from husband and wife to husband and wife by warranty deed with right of survivorship conveying property acquired by the husband individually through simple warranty deed require the filing deed tax as provided in Title 51, Section 618, Code of Alabama 1940?

"If so, would the tax be due on a nominal stipulated consideration or on a reasonable market value of the property being conveyed?

"Would the answer to the above question (3) be different if the property had been acquired jointly by the husband and wife rather than by the husband individually?

"Since we are having a number of deeds of the type mentioned above filed for recording, we would thank you for a ruling at your earliest convenience clarifying this matter for us"

Answering your first question which is contained in Paragraph Number 3 of your letter, based upon the facts detailed in your letter, it is my opinion that the deed in question is liable for a deed tax to the extent of the value of an undivided one-half interest therein. The whole value of the property described in the deed would not be conveyed since John Smith owned the entire fee simple title thereto prior to and at the time of his conveyance thereof to himself and wife, Sara Smith. Hence the deed conveyed no property from John Smith to himself but did convey an undivided one-half interest therein to his wife, Sara Smith, and the value of this interest in Sara Smith would, in my judgment, be subject to the deed filing tax. See Section 19, Title 47, Code 1940.

You next ask, in Paragraph Number 4, of your letter, whether or not the deed tax would be based upon the stipulated consideration of \$10.00 or would the tax be based upon the reasonable market value of the property conveyed, assuming the reasonable market value of the property to be \$10,000.00 as stated by you. The tax would not be based upon the stipulated consideration of \$10.00 as the value of the interest conveyed to Mrs. Smith was evidently worth approximately \$5,000.00 or one-half of the total value of \$10,000.0. See Section 618, Title 51, Code 1940.

You next desire to know whether or not there would be any deed tax due on a deed where John Smith and Sara Smith, husband and wife, owned real estate jointly and which they conveyed to John Smith and Sara Smith, husband and wife, with the right of survivorship. Please be advised that it is our judgment that there would be no deed tax due on such deed. John Smith and his wife, Sara Smith owned the property before it was conveyed by them to themselves subject to the right of survivorship and hence, there was no present interest passing from them under the second deed which they did not already own. We are, of course, assuming that the John Smith is the identical John Smith and Sara Smith is the identical Sara Smith throughout all of these transactions.

All the other questions propounded by you are answered in the foregoing opinion. If, however, there are additional questions which you desire answered with respect to this matter, please command us.

Very truly yours,

MacDONALD GALLION

Attorney General

May 1, 1959

Honorable John Watkins
Legal Counsel
Alabama League of Municipalities
24 South Hull Street
Montgomery, Alabama

Census—Municipalities

1. A census taken pursuant to Act No. 845, General and Local Acts 1953, page 1136, will not effect a change in the form of a municipal government.
2. A municipal council which through mistake is not organized under the proper statutes, is a de facto council.
3. The acts of a de facto council are valid.
4. The result of a census taken pursuant to Title 37, Chapter 10, Article 3, Code of Alabama 1940, as amended, may effect a change in the form of a municipal government.
5. When the results of a proper census show that a change in the form of a municipal government is warranted, such change takes place at the time prescribed by Title 37, Section 5, Code of Alabama 1940, as amended.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of April 11, 1959, is as follows:

"On June 30, 1958 an opinion was rendered by the Attorney General's office to Hon. Joseph A. Lee, of Scottsboro, ruling that special censuses taken by municipalities under the authority of Act No. 845, Acts of Alabama 1953, page 1136, could not work a change in the form of government of such municipalities. It is to be noted that this Act was codified in the 1955 Pocket Parts of the Code of Alabama 1940 under Title 37, Chapter 10, Article 3, as Title 37, Section 481(1) and 481(2). While these Sections specifically state that censuses taken under their authority shall be used only for the purpose of levying and collecting licenses and state-shared revenues on a population basis, Section 483 of the same Article (Which was part of the Code of 1940) provides that censuses taken under authority of the Article

shall be taken as true and correct and the form of government shall be controlled by such census.

"Following the adoption of Act No. 845, supra, many of our cities and towns caused censuses to be taken under its authority. Some of these cities and towns showed an increase in population from below 6,000 population to an enumeration above 6,000. At the request of one of our municipalities we respectfully request your official opinion upon the following questions:

"1. Following the adoption of Act No. 845, and before the 1956 municipal elections, a census was taken under the authority of this Act which revealed an increase in population from a figure below 6,000 population to an enumeration greater than 6,000. Reading the Act as a part of Article 3 of Chapter 10, Title 37 of the Code, this municipality changed its form of government at the 1956 election so that the council is presided over by a council-president and the mayor sits apart from the council with veto power.

"(a) Was this change in form of government valid and legal?

"(b) If the change was not valid, what is the status of acts of the council during this interval?

"(c) If the change was not valid, what steps should be taken by the mayor and council to correct this situation?

"2. Would it be possible for a municipality to conduct a census which meets the requirements of Act 845, supra, and the provisions of Article 3, Chapter 10 of Title 37 of the Code?

"(a) If this question is answered in the affirmative, what positive requirements must be met?

"(b) If answered in the affirmative, would such a census work a change in the form of government where the new enumeration indicates a change is needed under our present statutes?

"With the approach of municipal elections in 1960, many of our municipalities are vitally interested in the answer to these questions. Your kind attention to this inquiry will be most gratefully appreciated."

The opinion of this office to which your request refers, rendered to Honorable Joseph A. Lee, City Attorney, City of Scottsboro, under date of June 30, 1958, is reported in Quarterly Report of Attorney General, Vol. 91, page 47. Said opinion held that a census taken pursuant to Act No. 845, General and Local Acts 1953, page 1136, will not effect a change in

the form of a municipal government. On the basis of said opinion, your question number 1(a), is answered in the negative.

I am informed that at the 1956 general municipal election, in the municipality to which your request refers, there were elected five aldermen and a mayor. Since that time the municipal council has consisted of five aldermen in accordance with the proviso of Title 37, Section 426, Code of Alabama 1940. See Quarterly Report of Attorney General, Vol. 52, page 306. Since said election the mayor has not acted as a member of the municipal council in accordance with the provisions, applicable to municipalities having a population of six thousand or more inhabitants, of Title 37, Section 404, Code of Alabama 1940, as amended by Act No. 394, General and Local Acts 1955, page 930.

As indicated by my answer to your question number 1(a), the governing body of said municipality should have organized itself and operated after said 1956 election as a municipality having a population of less than six thousand inhabitants instead of one having a population of six thousand or more inhabitants. The adoption of the wrong form of government by said municipality occurred, under the facts presented, because of a mistaken belief on the part of the elected officials that a change in the form of the government of said municipality was warranted by the census to which your request refers.

Of course, this mistake made by said officials had no effect on the existence of said municipality. Cf. Biennial Report of Attorney General, 1936-38, page 265. I am of the opinion, that said municipal council has been a de facto council since its organization following the election held in 1956. Cf. *Butler v. Walker*, 98 Ala. 358, 13 So. 261; and *Rainwater v. State*, ex rel. *Strickland*, 237 Ala. 482, 187 So. 484. The acts of de facto municipal council are valid. See 62 C. J. S., *Municipal Corporations*, Section 431, page 827.

Therefore, in answer to your question number 1(b), you are advised that the acts of said municipal council, since said 1956 election, have been and are valid.

In answer to your question number 1(c), I am of the opinion that the governing body of said municipality should now reorganize itself in order that it will, in the future, operate as the governing body of a municipality having a population of less than six thousand inhabitants.

Your purpose will be better served if you have from me a general discussion of the applicable law rather than specific answers to the various parts of your question Number 2.

There would be no purpose in meeting the requirements of both Act No. 845, supra, and Title 37, Chapter 10, Article 3, Code of Alabama 1940, as amended by Act No. 855, General and Local Acts 1953, page 1146, since

a census taken under the provisions of Article 3, as amended, *supra*, governs for all purposes including a change in the form of a municipal government. (See the opinion reported in Quarterly Report of Attorney General, Vol. 91, page 47, *supra*, which also overruled the opinion reported in Quarterly Report of Attorney General, Vol. 81, page 50, and held that Act No. 845, *supra*, is not an amendment to Article 3, *supra*.)

A determination as to when a change in the form of a municipal government takes place after such a change is shown to be warranted by the result of a census conducted pursuant to Article 3, as amended, *supra*, is the problem which presents itself.

Title 37, Section 5, Code of Alabama 1940, as amended by Act No. 162, General and Local Acts 1955, page 408, provides in part as follows:

" ' . . . The last census, whether federal or taken as herein authorized, shall be taken in determining the population of a city or town. At the next election more than four months after the ninetieth day after the first day of the first regular business session of the legislature held next after the publication by the federal government of the regular federal decennial population census for Alabama, if the municipality shows a population which authorizes a change in its government, under this title, the proper officers for such a city shall be elected and perform the duties herein prescribed.' " (Emphasis supplied.)

Section 5, as amended, *supra*, must be construed in *pari materia* with Article 3, as amended, *supra*. *Coons v. Isbell*, 222 Ala. 409, 132 So. 891.

Therefore, I am of the opinion, that when a census taken pursuant to the provisions of Article 3, as amended, *supra*, shows that a change in the form of a municipal government is warranted, such change shall not take place until the next municipal election held more than four months after the ninetieth day after the first day of the first regular business session of the Legislature held next after the publication by the Federal government of the regular Federal decennial census for the State of Alabama.

Very truly yours,

MacDONALD GALLION
Attorney General

May 11, 1959

Honorable Otis R. Burton
Tax Collector
Talladega County
Talladega, Alabama
Taxation—Corporations

A stockholder of a corporation is not personally liable for its

delinquent ad valorem tax and no attempt should be made to collect it from him unless he has property belonging to the corporation in his possession.

Opinion by Assistant Attorney General Tiller.

Dear Sir:

Your request for an official opinion, bearing date of April 22, 1959, is as follows:

"I will appreciate very much if you will furnish me with an Official Opinion regarding the following, your interpretation of the Code of 1940, Title 51, Section 201.

"1. I have in Talladega County a delinquent Corporation for 1958 Ad Valorem Tax. I have not been able to locate any property real estate or personal owned by this corporation.

"2. One of the stock holders and operator of the Corporation, owns real estate and automobile, assessed in his name, and the 1958 tax on his property has been paid and the auto tax too.

"3. As a stock holder of this corporation, is he personally liable for its delinquent ad valorem tax? Should I as Tax Collector for Talladega County, attempt to collect this delinquent tax from him as set out in Title 51, Section 201, of the Code of Alabama 1940."

I note that you desire to know whether or not the stockholder of a corporation without assets is personally liable for the delinquent ad valorem tax owing by the corporation. That particular question must be answered in the negative. One of the advantages sought by individuals in incorporating their business is to avoid personal liability. The corporation is a separate and distinct entity, separate and distinct from its shareholders, and the shareholders are separate and distinct from it. The liability for the ad valorem tax is the liability of the corporation and not that of its stockholders. See *State v. Warrior River Terminal Co.*, 257 Ala. 208, 58 So. 2d 100. I am eliminating any question with respect to share stock tax.

You next ask whether or not you, as tax collector for Talladega County, should attempt to collect this delinquent tax from the stockholder in the delinquent corporation. This question has already been answered by what has been said hereinabove. You should not attempt to collect the delinquent tax from the stockholder referred to by you in your letter. Of course, if you can locate any property which belongs to the corporation, although it has gotten into the hands of the stockholders, it would be your duty to levy upon such property and, if it is personal property, you should follow said Section 201, Title 51, Code 1940.

Very truly yours,

MacDONALD GALLION
Attorney General

May 12, 1959

Honorable Earl M. McGowin, Director
Alabama State Docks Department
State of Alabama
C A P I T O L

Insurance—Alabama State Docks

Amount of medical, surgical and hospital service insurance on State Docks Department employees payable out of revenues of said Department is governed by provisions of Chapter 5, Title 26, Code of Alabama 1940.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing date of April 23, 1959 is as follows:

"At the present time, the State Docks Department carries Medical, Surgical, and Hospital insurance for its employees up to a liability coverage of \$1200.00. The authority for this insurance was granted to the Department of State Docks by the 1945 legislature. (1945 General Acts, Page 689.)

"This authority provides that such insurance purchases shall be based on the provisions contained in Chapter 5 of Title 26, Code of Alabama, 1940. Said chapter provides in part that: 'Liability of the employer under this Section is not to exceed the aggregate of \$1200.00.'

"The insurance people have informed me that for an additional three or four per cent of our present premium, this coverage could be increased to \$10,000 for each employee. This coverage is, of course, more in line with present medical costs, and it would be advantageous to the Docks if the additional coverage could be carried.

"Based on the above, I would appreciate receiving your opinion as to the following question:

"Is the \$1200.00 liability provision of Chapter 5 of Title 26 a limitation of the Docks Department's authority to purchase insurance for its employees, or can it be considered a minimum requirement with the right to obtain additional coverage at the option of the State Docks?"

I am of the opinion that the present total liability provision of \$1200.00 set out by Chapter 5, Title 26, Code of Alabama 1940 establishes the

maximum authorized amount of medical, surgical and hospital insurance which the State Docks Department may purchase for its employees.

The Legislature of Alabama, by Act No. 455, General Acts 1945, page 689, authorized the State Docks Department to carry the medical, surgical and hospital insurance for its employees and to pay the premiums thereon out of the revenues of the Department. Liability was limited by the Act as follows:

" . . . The liability under any such policy or contract of insurance, arising out of such facts and circumstances as would bring such claim or cause of action within the provisions of Chapter 5, Title 26 of the Code of Alabama 1940, if the Department were subject to the provisions of said law, shall be governed by the provisions of said law; the liability in all other cases under any such policy or contract of insurance, except to the extent expressly stated to the contrary therein, shall be the same as that imposed by law upon private persons, firms or corporations in like circumstances."

The pertinent part of Chapter 5, Title 26, Code of Alabama 1940 is contained in Act No. 341, General and Local Acts 1957, page 450 (Title 26, Section 293, 1957 Supplement, Code of Alabama 1940) as follows:

" . . . The total liability of the employer under this section shall not exceed the aggregate of twelve hundred dollars. . . "

It is clearly the purpose of Act No. 455, General Acts 1945, page 689 to provide, at no cost to employees of the State Docks Department, medical, surgical and hospital insurance subject to the maximum limitation set out in Chapter 5, Title 26, Code of Alabama 1940. No minimum requirement is set out and there is no right or option to obtain additional coverage by the State Docks Department.

Very truly yours,

MacDONALD GALLION
Attorney General

May 12, 1959

Miss Gladys Gunter
Tax Assessor, Walker County
Jasper, Alabama

Taxation—Exemption

The Industrial Development Board of the City of Jasper, Alabama, is exempt from all State and County taxes.

Opinion by Assistant Attorney General Tiller.

Dear Miss Gunter:

Your request for an official opinion bearing date of April 28, 1959, is as follows:

"As Tax Assessor of Walker County, Alabama, I respectfully request your official opinion on the following matter.

"The Industrial Development Board of the City of Jasper, Alabama, is a Municipal Corporation, and it has assessed in my office land, buildings, machinery and equipment. The land, buildings, machinery and equipment is used by a poultry processing plant. "All of the land, buildings, machinery and equipment is owned by the Industrial Development Board of Jasper, Alabama, a Municipal Corporation and it is under lease of Marshall Durbin, Inc.

"I respectfully request that you advise me if the Industrial Development Board of Jasper, which is a Municipal Corporation, is exempt from the payment of state and county taxes. I will appreciate your prompt reply."

You desire to know whether or not the Industrial Development Board of the City of Jasper is exempt from the payment of State and County taxes. Your question is answered in the affirmative. I take it that this corporation was organized under and pursuant to Act No. 648, General Acts 1949, Page 991. Section 11 of said Act provides for exemption from taxation in language as follows:

"Exemption from taxation. The corporation and all properties at any time owned by it and the income therefrom, and all bonds issued by it and the income therefrom, shall be exempt from all taxation in the State of Alabama."

It will be noted that this section is couched in rather broad and inclusive language; that it and "all properties at any time owned by it and the income therefrom, and all bonds issued by it and the income therefrom, shall be exempt from all taxation in the State of Alabama". Emphasis supplied)

I must assume that the Legislature meant what it said. At any rate the Legislature provided, in Section 2 of the Act, that "This act shall be liberally construed in conformity with the said intention."

I, therefore, am of the opinion and hold that said corporation is exempt from all State and County taxes.

Very truly yours,

MacDONALD GALLION
Attorney General

May 13, 1959

Honorable William F. Killough
Judge of Probate
Talladega County
Talladega, Alabama

Counties—Corporations—Contracts

The fact that the majority of the stock of a corporation is owned by a member of a county governing body does not prohibit such corporation from contracting with said county under Title 41, Section 211, Code of Alabama 1940.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of April 16, 1959, is as follows:

"In connection with our telephone conversation of this morning. I would like to have an official opinion from you, at your earliest convenience, on a question that has arisen in connection with Title 41, Section 211 of the Code.

"The question is can a corporation a majority of whose capital stock is owned by one of the county commissioners, in this case 75%, do business with the county. That is can he legally sell road building material to the county and can I legally pay him for it.

"I understand that in rulings volume 49, page 158 and volume 51, page 5 there are rulings in the affirmative where the corporation is owned 'in part' or where the county commissioner is a 'minority' stockholder. My question is can it be done where the county commissioner is a 'majority' stockholder."

I am of the opinion that all parts of your inquiry should be answered in the affirmative.

Title 41, Section 211, Code of Alabama 1940, provides in pertinent part as follows:

"County officers interested in county contracts. — Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract, for work or services of the county, or is employed in any way under such contract, or sells any goods or supplies to the county,

or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months;”

A contract with a corporation is entirely different from a contract with the individuals who compose it. It is a well accepted principle of law that a corporation is a distinct entity to be considered separate and apart from the individuals who compose it. — *Navco Hardwood Company v. Bass*, 214 Ala. 553, 108 So. 452.

A general contracting corporation, one of whose minority stockholders is also an officer of the corporation and a member of a county governing body, is not precluded from bidding on contracts and accepting and performing contracts with said county. — *Quarterly Report of Attorney General*, Vol. 51, page 5.

There is no prohibition against a corporation, owned in part by a member of a county governing body, entering into a contract with said county. — *Quarterly Report of Attorney General*, Vol. 49, page 158.

A probate judge of a county who is also president of an incorporated bank, which buys bonds, warrants or claims from said county, is not pecuniarily interested in said transaction so as to violate the above code section. — *Quarterly Report of Attorney General*, Vol. 16, page 65. See also *Quarterly Report of Attorney General*, Vol. 17, page 6.

A member of a county governing body, who owns a majority of the stock in a corporation which manufactures and sells goods to said county, is not pecuniarily interested in such sales as to be violative of the above code section. — *Quarterly Report of Attorney General*, Vol. 1, Page 165.

In view of the above opinions of this office, particularly the one last referred to, it follows that a corporation, 75% of the stock of which is owned by a member of a county governing body, is not prohibited from contracting with said county. Such would not be violative of Title 41, Section 211, *supra*.

Very truly yours,

MacDONALD GALLION
Attorney General

May 14, 1959

Hon. Jimmy Hitchcock
Associate Commissioner
Alabama Public Service Commission
C A P I T O L

Motor Carriers—Exemptions.

Under the provisions of Section 2 A (3) of Act No. 669, General Acts of 1939, page 1064, which Act is generally referred to as the Alabama Motor Carrier Act of 1939, and said Act as amended, so-called "pulpwood chips" which are cut from the residue or slabs removed from logs at the sawmill in the process of manufacturing lumber, and which are later converted into pulp and used in manufacturing paper or related materials, are "pulpwood" as is contemplated in the exemption contained in Section 2, supra, of said Act.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of April 10, 1959 is as follows:

"Section 301 (2) of Title 48 of the Code of Alabama 1940 provides certain exemptions from the provisions of Alabama Motor Carrier Act of 1939 which are contained in the Code of Alabama commencing with Section 301 (1) of Title 48. Among other exemptions it is provided that the Act shall not be construed to apply to motor vehicles if engaged in hauling logs, pulp wood, and certain other commodities (but not manufactured products thereof).

"We have received inquiry from a party who is interested in the transportation of wood chips by truck and our information is that these wood chips represent pulp wood after it has begun to receive the processing which readies them for use in the manufacture of paper. In other words, the pulp wood itself is exempt and this wood is used by paper mills in the manufacture of paper. After it is received by the paper mill it must go through with certain processing and this processing includes the reduction of the wood to chips.

"I will appreciate your official opinion as to whether or not the transportation of wood chips by motor vehicle in Alabama is exempt from the operation of Alabama Motor Carrier Act of 1939."

This office has previously ruled in an official opinion addressed to Honorable Harry H. Haden, Commissioner of Revenue, State of Ala-

bama, dated February 27, 1959, that so-called "pulpwood chips" are "pulpwood" as is contemplated under the provisions of the Alabama Forest Products Severance Tax Act, No. 169, General Acts 1945, page 285, and said Act as amended.

It was also pointed out in that opinion that the chips were made from the residue or sides of logs which were left behind when the logs were cut into lumber at the sawmill. After the chips are made, the usual procedure is for them to be shipped to a paper mill where they are converted into pulp in the process of making paper or related material. The same type of so-called "pulpwood chips" appear to be involved in your request.

The foregoing being considered, it is my opinion that said pulpwood chips are "pulpwood," as that term is used in the exemption contained in Section 2, supra, of the Alabama Motor Carrier Act of 1939, and said Act as amended. The mere fact that the slabs are chipped so that they may be better converted into pulp at the paper mill would not cause them to fall within the category of a manufactured product.

Very truly yours,

MacDONALD GALLION
Attorney General

May 15, 1959

Honorable Roy Berryman
Mayor, Town of Leighton
Colbert County
Leighton, Alabama

Licenses—Municipalities—Taxation.

1. A contract motor carrier is not subject to a municipal license tax where it enters a municipality merely to deliver goods and does not maintain therein a business terminal or station facility.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of February 20, 1959, is as follows:

"This Town has the following section in its 1959 License Ordinance, to wit:

"UNLOADING PRIVILEGES: Any person, firm or corporation who unloads, delivers, distributes or disposes of any goods, wares, merchandise or produce in the Town of Leighton, Alabama, which said goods, wares, merchandise or produce was transported from a point without the Town of Leighton, Alabama, to a point within the Town of Leighton, Alabama, when rated capacity of vehicles and towed load is $\frac{3}{4}$ ton or less, -----420.00

"When rated capacity of vehicle and towed load exceeds $\frac{3}{4}$ ton,
----- \$40.00

"This Town has an official census population of 1,050, and your opinion is respectfully requested on the following matters:

"1. Does Title 48, Section 301(31) 1940 Code of Alabama, as amended, restrict this Town's enforcement of the above quoted License Ordinance Section when a motor trucking company does not maintain a terminal or station facility as defined under the above quoted Section of Title 48, but merely delivers goods, wares, etc., on a contract basis to points within this Town.

"2. If the above referred to Section of Title 48 is not applicable, is there any other restriction in regard to the levying of a License Tax upon motor trucking companies on a population basis.

Title 48, Section 301(31) 1955 Cumulative Pocket Parts, Code of Alabama 1940, to which your request refers, is Section 31, of Act No. 669 General Acts 1939, page 1064.

The Supreme Court of Alabama, in the case of Decatur Transit v. City of Gadsden, 249 Ala. 314, 31 So. 2d 339, held that a contract motor carrier which merely delivers goods within a municipality and does not maintain therein a business terminal or station facility is not subject to a municipal license tax because of the provisions of Section 31, of Act No. 669, supra. See also City of Hartselle v. Baggett Transportation Company, 35 Ala. App. 640, 51 So. 2d 713.

Therefore, I am of the opinion, that the Town of Leighton, may not levy and collect from such a motor carrier the municipal license prescribed by the Section of the 1959 License Ordinance, which is quoted in your letter.

I know of no other statute which restricts the operation of said Section of said 1959 license ordinance. Cf. Quarterly Report of Attorney General, Vol. 89, page 41.

Very truly yours,

MacDONALD GALLION
Attorney General

May 15, 1959

Honorable George A. Toulmin
Commissioner of Licenses
Mobile County
Mobile, Alabama

Licenses—Vending Machines—Penalties

1. Under the provisions of Title 51, Section 831, as amended, Code of Alabama 1940, a license is required to be paid before a person engages in any business or does any act for which a license is called for under the provisions of Chapter 20, Article 1, Title 51, supra, and if not so paid it becomes delinquent upon the doing of such business or the performance of such act.

2. Sub-sections (c) and (d) of Section 835, Title 51, Code of Alabama 1940, makes it mandatory that a Probate Judge or a Commissioner of Licenses collect the fifteen per cent penalty before issuing a license, where the license is delinquent.

3. As a practical matter, it is reasonable to assume that said sub-sections also require a Judge of Probate or a Commissioner of Licenses to at least make an inquiry of an applicant, when he makes application for a license, before issuing the license, where there is some reason to believe that the license might be delinquent.

4. Where a so-called additional license as is provided for under Title 51, Section 848 (c), as amended, Code of Alabama 1940, is delinquent, the fifteen per cent penalty would be due only on the amount of the additional license, and not on the amount previously paid and for which credit is to be given on the additional license.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of April 23, 1959, is as follows:

"The undersigned Commissioner of Licenses for Mobile County, respectfully requests your official opinion as to my legal right to comply with a recent request of Lance, Incorporated, of Charlotte, North Carolina and of the State of Alabama, Department of Revenue. Attached hereto are photostatic copies of the letters received by us and just herein above referred to. Briefly stated, the request is that

'additional license and decals be forwarded to the district office of Lance, Incorporated', from which the remittances were received.

"It will be observed that the checks tendered in payment of the additional amounts due because of the proposed change from \$2.00 to \$12.00 Vending Machine licenses, do not include any amount to cover penalty or interest that may be due because of the failure of Lance, Incorporated, to have obtained 'proper' vending licenses on or before October 31, 1958.

"Of course, I wish to comply with the requests of Lance, Incorporated, and of our State Department of Revenue, but I question our legal right to do so until the 15% penalty (and interest) are paid at the same time with the amount due for the additional vending machine licenses.

"We respectfully refer you to the following which seem to me pertinent to the question involved:

Section 613, as amended, and Section 848 (c), Title 51, Code of Alabama 1940 Section 7 and 8, Act No. 245, General Acts of Alabama, General Session 1945, Page 367 Section 835, Subsection (c), Title 51, Code of Alabama 1940, Quarterly Report of Attorney General, Volume 30, Page 42.

"The question is, therefore; May I legally issue the additional vending machine licenses at this time if the 15% penalty is not paid at the time of issuing the additional license?

"An early advice will be greatly appreciated."

It is not possible for me to determine from what is stated in your letter and the attachments thereto, whether Lance, Incorporated, has already operated machines vending articles for five cents or more or whether said Corporation is just proposing to do so.

You speak in this respect of a proposed conversion of the vending machines already licensed as penny vending machines under the provisions of Title 51, Section 613, as amended, Code of Alabama 1940 from penny vending machines to machines vending merchandise requiring the deposit of a nickel or more, or a conversion from so-called penny machines to nickel machines requiring a \$3.00 State license and a \$4.00 County license, under the provisions of Section 613, as amended, *supra*.

Of course, if the Corporation is merely proposing to make the change in the machines and has not already done so and operated them as so converted, then there would be no problem, as the licensee would be due to pay only the amount of \$10.00 for the additional license and fifty cents for the issuance fee as to each of such machines, as Title 51, Section 848 (c), as amended, Code of Alabama 1940 allows a credit in the issuance of an additional license for the amount previously paid. If on the other hand

the Company has already made the conversion and has already operated the machines or machines requiring more than a nickel to operate then the license as to the additional amount required would be delinquent.

Title 51, Section 835(c), as amended, Code of Alabama 1940, provides that all licenses levied under the provisions of Title 51 of the 1940 Code, unless otherwise provided, shall be due and payable as of October first of each year and shall be delinquent November first thereafter, and would apply under normal conditions.

In the case, however, of new businesses or changes in businesses requiring additional licenses, Title 51, Section 831, as amended, Code of Alabama 1940, requires the person, firm, or corporation to procure a license before they shall engage in or carry on any business or do any act for which a license by law is required. Title 51, Section 834, Code of Alabama 1940, also makes it unlawful for any person, firm or corporation to engage in any business or do any act for which a license is required, without first having paid for and taken out a license therefor. If in such cases the license is not procured before any business is done or act performed then the license would immediately become delinquent upon the doing of the business or the act calling for the license.

Thus, in this case if the corporation involved has already converted the machines to nickle machines or machines requiring a coin or coins of larger denomination and has already operated them as such, the license insofar as the additional amount of \$10.00 is concerned would be delinquent as to each of such machines, and the penalty of fifteen per cent as is provided for in Title 51, Section 835(c), as amended, Code of Alabama 1940, would have attached and become due.

Subsection (c) of Section 835, as amended, *supra*, provides that where the license is delinquent the fifteen per cent penalty must be collected by the Judge of Probate or the Commissioner of Licenses. Subsection (d) of the same Section makes it unlawful for the Probate Judge or other official to fail to collect the penalty when issuing the license.

A study of Act No. 245, General Acts of Alabama 1945, page 367, creating the office of Commissioner of Licenses in counties having a population of not less than 175,000 and more than 400,000 and which would apply to Mobile County, reveals that said Act has not in any respect repealed the provisions of the Code Sections hereinabove referred to insofar as the collection of licenses and penalties are concerned in Mobile County, Alabama. The provisions of said Section then would be just as applicable in Mobile County as elsewhere in this State.

In the light of the provisions of Subsections (c) and (d) of Section 835, as amended, *supra*, requiring a Probate Judge or a Commissioner of Licenses to collect the fifteen per cent penalty where the license is delinquent and which make it unlawful for him to issue a license when

delinquent without the payment of the penalty, it appears that a Probate Judge or License Commissioner should make an inquiry in cases where he might have reason to believe that a license is delinquent, as to whether the applicant has operated the business before applying for the license or as to what the circumstances might be. It also appears that in most cases such an inquiry would be all that is needed to secure the necessary information, and could be made at the time that the license is applied for.

If the applicant for the license makes an untrue or incorrect statement in this respect, then that would be a proper case to be handled by the license inspector or by the State Department of Revenue as it is fully recognized that Probate Judges and License Commissioners do not have a staff of investigators or the facilities to make investigations in such cases. In view of the provisions, however, of Subsections (c) and (d) of Section 835, as amended, *supra*, it appears that at least an inquiry is required to be made by a Probate Judge or a Commissioner of Licenses when a license is applied for, whether it be an additional license or otherwise, where he has reason to believe that the license might be delinquent. If this were not so, then it appears that said subsections insofar as they require the payment of the penalty in the case of a delinquent license, and make it unlawful for the Probate Judge or the License Commissioner to issue a delinquent license without the payment of the fifteen per cent penalty, would have no field of operation or practical purpose.

Your question then is answered to the effect that if Lance, Incorporated, has already operated machines converted to nickel machines, then the additional license required under the circumstances would be delinquent, and you would be required under the law to collect the fifteen per cent penalty on the amount of the additional license, and you could not lawfully issue the license without the payment of the penalty.

Very truly yours,

MacDONALD GALLION
Attorney General

June 1, 1959

Hon. John R. Sparks
Clerk of the Circuit Court
Cullman County
Cullman, Alabama

Clerks of Circuit Courts—Registers—Costs and Fees—Absentee
Ballots—Inferior Courts—Opinions Overruled—Modified and
Distinguished.

1. A clerk or register of a circuit court on a salary basis

by virtue of a constitutional amendment, who is also ex officio clerk of a county or inferior court, or register of an inferior court, receives only that salary provided for and does not receive additional fees from the inferior court.

2. Registers of circuit courts, although placed on a salary by virtue of a constitutional amendment, receive fees or compensation for handling absentee ballots in addition to said salary, since such duties are entirely foreign to any official act as register.

3. Letter opinion under date of March 23, 1959 to Mrs. Ethel Coleman, Register of the Circuit Court of Colbert County, overruled and modified in part.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of March 31, 1959, is as follows:

"Act No. 297, House Bill 554 of the 1957 Regular Session placed the office of the Circuit Clerk of Cullman County on salary. This act specifically applies to the office of Circuit Clerk. However it fails to mention or incorporate the office or duties performed by me as Ex-Officio Clerk of the County or Inferior Court.

"My auditor supervisor informed me that your department had rendered an opinion for Colbert County stating that the Clerk or Register was still entitled to the fees which shall be collected as an Ex-Officio member of a lower court. He suggested that I write you for an opinion since my position, as Ex-Officio Clerk of Cullman County Court, seemed to be similar or the same. I would sincerely appreciate your giving me this information."

In my judgment, the total compensation to which you are entitled for services performed by you, both in the Circuit Court and County Court of Cullman County, is that provided for by Act No. 297, General and Local Acts 1957, page 379, that is, an annual salary of \$6,000.00.

In examining the legislative acts and statutes applicable to Cullman County, I do not find that there exists in such county a specially created statutory inferior court. Rather, Cullman County is served by a county court, operating pursuant to Title 13, Sections 313-349, Code of Alabama 1940, this being the general law under which such courts function in all of the counties of our State not otherwise subject to a special law as to this matter. Under the provisions of Section 315, supra, the clerks of the circuit courts of the several counties of the State are made ex officio

clerks of the county courts of their respective counties. It is provided by Section 316, supra, that for their services in such county courts such clerks shall be allowed the fees and compensation now allowed by law to the clerks of the circuit courts in criminal cases, which fees shall be paid in like manner.

In my judgment, you hold office as Ex Officio Clerk of the County Court of Cullman County solely by reason of the fact that you are the circuit clerk of such county. Under the provisions of the general law which I have cited above, upon your assumption of the duties of the office of circuit clerk, you automatically became the ex officio clerk of your county court. As you know, prior to the advent of Act No. 297, supra, you were compensated for your duties in each of such courts by a system of fees applicable thereto. It is my opinion that upon the adoption of Act No. 297, supra, your compensation became that provided for by such act in lieu of the fees which you formerly received for the services rendered by you with respect to each of such courts. It is obvious that the Legislature at the time of passage of Act No. 297, supra, was fully aware of the general law provision which required you to serve as ex officio clerk of the county court and it would be difficult to say that they did not take this into account in fixing the compensation of your office. I do not believe that they fixed your compensation based upon only a portion of the duties performed by you but, rather, in my opinion, your compensation was fixed based upon the duties performed by you, both in your capacity as circuit clerk and your ex officio capacity with respect to the county court. Such to me is the meaning and significance of that portion of Section 1 of Act No. 297, supra, which provides that:

"The following officers of Cullman County shall receive the following annual salaries in lieu of all other compensation . . ." (Emphasis supplied.)

To me, this is an expression by the Legislature that the annual salary of \$6,000.00 to be paid you under the provisions of this act is the total compensation to which you are entitled for the performance of your duties with respect to each of these courts.

In your letter you mention the fact that an opinion has been rendered by this office to the Register of Colbert County. In examining the files of this office, I find that on March 23, 1959, I did advise the Register of the Circuit Court of Colbert County that she would be entitled to receive the salary prescribed by law for the duties performed by her as register of such circuit court and, in addition thereto, the fees which accrue to her as Ex Officio Register of the Colbert Law and Equity Court.

Upon further review by this office, I am led to the conclusion that this former opinion is in error. Giving full and studied consideration to all of the facts and circumstances pertaining to the matters discussed in the opinion addressed to the Register of the Circuit Court of Colbert County referred to in your request, I am of the opinion that the reasoning ex-

pressed herein should likewise have application to that office. In my judgment, it must be said that the Legislature, in fixing the salary and compensation of the Register of the Circuit Court of Colbert County, took into consideration the fact that such officer likewise performed certain duties with respect to the Colbert Law and Equity Court and fixed such compensation so as to provide reasonable remuneration for such duties. This being the case, the salary prescribed for the Register of the Circuit Court of Colbert County by Act No. 642, General and Local Acts 1957, page 972, is the full and total compensation to which such officer is entitled for services rendered, both in the Circuit Court of Colbert County and in the Colbert Law and Equity Court. Such, I believe, was the intent of the Legislature, and accordingly, the letter opinion rendered Mrs. Ethel H. Coleman, Register of the Circuit Court of Colbert County, under date of March 23, 1959, is hereby overruled and withdrawn and this opinion is substituted in lieu thereof.

It should be added, however, that registers on salary are entitled to receive compensation or fees for handling absentee ballots since such duties are entirely foreign to any official act or the performance of any service connected directly or indirectly with the office of register. Title 17, Section 64 (31), 1955 Cumulative Pocket Part, Code of Alabama 1940 (Act No. 733, General and Local Acts 1953, page 993); *Kendrick v. Boyd* 255 Ala. 53, 51 So. 2d 694; 35 Ala. App. 592, 51 So. 2d 697; 255 Ala. 422, 51 So. 2d 701.

To conclude, I again advise that, in my opinion, the annual salary of \$6,000.00 provided for your office by Act No. 297, supra, is the total compensation to which you are entitled for duties performed by you with respect to the office of Clerk of the Circuit Court of Cullman County and also in your capacity as ex officio clerk of the county court of such county.

Very truly yours,

MacDONALD GALLION
Attorney General

June 2, 1959

Honorable John C. Curry
Superintendent of Banks
State Banking Department
C A P I T O L

Loans—Banks and Banking.

All installment loans governed by Act No. 787, General and Local Acts 1951, page 1385 are required to be repaid in

monthly installments or installments of a lesser period, subject to minimum limitations set out in said Act.

Opinion by Assistant Attorney General Clark.

Dear Sir:

Your request for an official opinion bearing the date of February 20, 1995 is as follows:

"Section 273, Title 5, Code of Alabama 1940, as amended, 1955 Cumulative Pocket Parts, (Section 13, Act No. 787, 1951 Regular Session), is as follows:

" 'Limitations on maturity of loans and amount of monthly installments. — All loans governed by this chapter must mature within thirty-six months from date and each monthly payment or installment shall equal or exceed two and eight-tenths per cent (2 8/10%) of the amount of the total indebtedness due by the borrower to the licensee, and in no event shall each monthly installment be less than five dollars (\$5.00).'

"It seems clear that the quoted section fixes the minimum amount of 'each monthly installment.' The Bureau of Loans has heretofore interpreted this section to mean, by implication if not by definition, that all installment loans 'governed by this chapter' must be made repayable in installments at intervals of not exceeding one month. This interpretation is now in question and we find it necessary to request your opinion as follows:

"Are all installment loans governed by Chapter 12, Title 5 of the Code of 1940, as amended by Act No. 787, 1951 Regular Session, required to be repayable in monthly installments or installments of a less period, subject to the minimum percentage and dollar limitations on payments set out in Section 273 above quoted?"

Section 13 of Act No. 787, General and Local Acts, 1951, page 1385 (Title 5, Section 273, 1955 Cumulative Pocket Part, Code of Alabama 1940) in setting out limitations on maturity of loans and amount of monthly installments prescribes that:

- (1) All loans must mature within thirty-six months from date;
- (2) Each monthly payment or installment shall equal or exceed two and eight-tenths (2 8/10%) of the amount of the total indebtedness due by the borrower to the licensee;
- (3) No monthly payment shall be less than five dollars (\$5.00).

There appears to be no doubt as to the maximum time of a loan and of amount of the minimum monthly payment.

Act No. 787, General and Local Acts 1951, empower the Supervisor of the Bureau of Loans, subject to approval of the Director of the Department of Commerce, to promulgate rules and regulations necessary to enforce such Act.

After the State Banking Department was created by Act No. 204, General and Local Acts 1955, page 497, effective September 1, 1955 approval of such rules and regulations was made by Superintendent of Banks.

Rules and regulations promulgated pursuant to such power, made and duly approved May 1, 1957 set out the following:

"1. DEFINITIONS

"4. Schedule of Payments—how obligation is to be repaid as to (1) amount of payment (2) number of payments (3) due date of payments, (Single, weekly, semi-monthly, monthly)."

The general rule is that the administrative construction of the laws by agencies created by law to administer them is to be given much weight. *First Nat. Bank of Birmingham v. Basham*, 238 Ala. 500, 191 So. 873.

Where there is doubt about the proper construction of a statute, contemporaneous construction placed thereon by officers authorized to construe and administer the law is entitled to favorable consideration, and there is a strong presumption as to its correctness, where such has been followed for a long time. *Ex Parte Darnell*, 262 Ala. 71, 76 So.2d 770.

Your request advises that the Bureau of Loans has interpreted Section 273, supra, to mean that all installment loans governed by Chapter 12 of Title 5, Code of Alabama 1940, as amended, must be made repayable in installments at intervals of not exceeding one month.

Based on the above rules and regulations made pursuant to powers given in the 1951 Act governing small loans and duly approved, it is my opinion that all installment loans are required to be repayable in monthly, semi-monthly or weekly installments subject to the minimum limitations of said Act.

Yours very truly,

MacDONALD GALLION
Attorney General

June 2, 1959

Hon. Ralph Crysell
Circuit Clerk and Register
Conecuh County
Evergreen, Alabama

Licenses—Fines.

Fines paid as to violations of Title 51, Section 834, Code of Alabama 1940, are criminal penalties and are not amounts paid as "licenses," and are to be distributed as directed under Section 834, supra, one-third to the County and two-thirds to the State.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of February 21, 1959, is as follows:

"As clerk of the County Court of Conecuh County, Alabama, I have a case on my docket against an individual charged with the offense of operating business without a license.

"Said individual has entered his plea of guilt and the fine has been assessed.

"My question is how shall I make distribution of said Fine? Should I make said distribution of said fine under 'Title 51 Section 831(1) or under Title 51 Section 834 Code of Alabama 1940' "

In my opinion you should distribute the amount paid as a fine for violating the provisions of Title 51, Section 834, Code of Alabama 1940, as directed by that Section. That is, you should pay one-third to the County, and two-thirds to the State.

Section 834, supra, is a criminal statute, and makes it a misdemeanor for one to be guilty of operating without first having paid for and taken out a license, and the penalty prescribed is clearly a fine.

Act No. 572, Acts of Alabama 1955, page 1248, directing that amounts collected for "state and county licenses" shall be distributed one-half to the state and one-half to the county expressly relates to amounts collected as "licenses." It has nothing to do with amounts paid as criminal penalties and fines under Section 834, supra.

Very truly yours,

MacDONALD GALLION
Attorney General

June 2, 1959

Honorable Frank R. Stewart
Superintendent of Education
State of Alabama
Montgomery, Alabama

Schools—School Trustees—County Boards of Education.

1. A County Board of Education is not legally required to appoint as school trustees the three persons who received the highest number of votes of the patrons, but may select any three from the list of six nominated, as provided by law, by the patrons of the school.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of May 27, 1959, is as follows:

"Section 100, Title 52, 1955 Cumulative Pocket Part, Code of Alabama 1940, sets forth the qualifications and method of selection of school trustees. Specifically, that section provides that 'The county board of education shall appoint for every school in the county, from a list of six discreet, competent, and reliable persons of mature years nominated by the patrons of the said school, which list shall be kept on file by the board, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve for a term of four years as trustees of the school, to care for the property, to look after the general interest of the school, and make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school.'

"When a list of the names of six persons who have been nominated by the patrons of a given school is submitted to the county board of education, it then becomes the duty of the board of education to appoint three from that list to serve as trustees of the school for a period of four years.

"I request your official opinion on the following question:

"Is the county board of education legally required to appoint as trustees the three persons who received the highest number of votes of the patrons?"

It appears from Act No. 442, General Acts 1919, at page 588, that school

trustees were then appointed by the County Board of Education, not exceeding three in number. The patrons of the school had no voice in their selection.

By Act No. 590, General Acts 1931, page 672, it was provided that three school trustees shall be elected for each school in every county by the patrons of the school. Then the County Board of Education had no voice in their selection.

This office in an opinion rendered to Lloyd Woodruff, Superintendent of Education of Butler County, on September 15, 1932, reported in Biennial Report of Attorney General, 1930-32, page 1018, held said 1931 Act to be unconstitutional. As the law now stands with reference to the selection of school trustees, they must be appointed from the six names nominated by the patrons of the school. Opinion of the Attorney General, Office Edition, Volume 4-A, page 179. Title 52, Section 100, Code of Alabama 1940, as amended by Act No. 310, General and Local Acts 1951, page 605. Section 100, *supra*, as amended, provides as follows:

"The county board of education shall appoint for every school in the county, from a list of six discreet, competent, and reliable persons of mature years nominated by the patrons of the said school, which list shall be kept on file by the board, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve for a term of four years as trustees of the school, to care for the property, to look after the general interest of the school, and to make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school. The board of education shall fill all vacancies occurring in the office of trustee for the unexpired term from the list of nominees on file until the names on such list are exhausted. The term 'patrons' as used herein shall be construed to mean the parents and guardians of children in attendance at the school."

As said by the Supreme Court of Alabama in *State v. Payne*, 224 Ala. 223, 139 So. 99, "It is too manifest to require the need of citation of authorities that the law-makers contemplated that the patrons should have a voice in the matter and that their wishes, as well as the law, should not be arbitrarily ignored and brushed aside."

It is equally clear to me that the County Board of Education is to also have a voice in the selection of the trustees, because they are to select three from a list of six nominated by the patrons of the school. If required to take or appoint the three persons who received the highest number of votes of the patrons, the Board would have no voice in their selection. The selection under such a construction of Section 100, as amended, *supra*, would place the appointment or election of the trustees entirely in the hands of the patrons of the school. Instead of having a voice in their selection, that voice would be final.

By the statutes of this State, the County Board of Education determines with and on the advice of the County Superintendent of Education, and his professional assistants, the educational policy of the county, and shall prescribe rules and regulations for the conduct and management of the school. It has control and supervision of the public school system of the county. Sections 73 and 74, Title 52, Code of Alabama 1940.

It is my opinion, therefore, from what has been said above, that your question should be answered in the negative. *State v. Payne*, supra; Section 100, as amended, supra; Quarterly Report of Attorney General, Volume 60, page 145; Biennial Report of Attorney General, 1928-30, pages 380 and 426; Biennial Report of Attorney General, 1934-36, pages 197 and 595.

Yours very truly,

MacDONALD GALLION
Attorney General

June 9, 1959

Hon. R. R. Coleman
Tax Assessor
Clarke County
Grove Hill, Alabama

Tractors—Gasoline Tax—Refunds—Assessments.

1. Under the provisions of Act No. 743, Acts of Alabama 1957, page 1173, it is not necessary that a tractor be assessed for ad valorem taxes before a claimant files his application for refund.
2. The tax paid on gasoline used in farm tractors assessed as escape after September 30, and after claimant has filed refund for taxation, may nevertheless be refunded.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion bearing date of May 21, 1959, is as follows:

"I wish to request your official opinion on the following matter: A resident of Clarke County duly filed, prior to September 30, 1958, a claim for refund of the state tax paid by him on gasoline used on his farm for agricultural purposes, under the provisions of Act No.

743, approved September 23, 1957. His claim was audited, allowed and paid. It was then ascertained that his tractor, in which this gasoline was used, had not been assessed for taxes for the tax year 1958 (the tax which became due and payable on October 1, 1958), and he has been called upon to reimburse the State for the amount refunded to him.

"As Tax Assessor of Clarke County, I have now made an escape assessment of the tractor of this taxpayer for 1958 taxes, and it is assessed for 1959; in due time, of course, this escape assessment will be made final and will presumably be collected by the Tax Collector under the provisions of Title 51, Section 53, as last amended.

"I call your attention to the fact that the statute does not require that the tractor be assessed prior to the filing of the claim; it requires assessment prior to the refund. This claim was filed within the time permitted by the statute, but under the language of the statute the claim obviously should not have been allowed and paid until the tractor had been assessed. However, now that the tractor has been assessed for ad valorem tax purposes, my questions are:

"1. Could this taxpayer's claim for refund be now properly allowed and paid?

"2. If so, instead of reimbursing the State for the amount already paid, and again requesting payment under the claim previously filed, could this taxpayer offset his claim, which is presently allowable, against the demand for reimbursement?"

I also have a request for an opinion dated May 27, 1959, from Hon. Billy J. Whiddon, Tax Collector, Henry County, which is as follows:

"I have been advised that Mr. R. R. Coleman, Tax Assessor of Clarke County, Alabama, has requested an opinion of your office concerning certain questions in relation to the refund of gasoline tax on tractors. This refund is made under the provisions of Act No. 743, General Acts 1957, page 1173.

"I would like to adopt the facts contained in Mr. Coleman's request and ask you one additional question: What authority does the Department of Revenue have to demand the repayment of a refund of taxes made under the provisions of said Act if the tractor was not assessed for ad valorem taxes at the time the refund was made by the Revenue Department, but assessed as an escape by the Tax Assessor at this time?"

My answer to your first inquiry is in the affirmative.

Section 5 of Act No. 743, Acts of Alabama 1957, page 1173, reads as follows:

"Section 5. Not more than one claim for a refund of the state tax paid on gasoline may be filed by any person under the provisions of this Act with respect to gasoline used during the twelve month period ending on the thirtieth day of June each year; and no claim shall be allowed with respect to any such twelve month period unless such claim is filed on or before the thirtieth day of September of the year in which such twelve months period ends."

The above-quoted section of the act is clear and the language used therein is unambiguous. It requires that the person claiming the exemption granted by the act must file a claim on or before the 30th day of September of the year in which he claims the exemption.

Section 7(a) of Act No. 743, *supra*, reads as follows:

"Section 7(a). Before any refund of State gasoline tax can be made to any applicant all tractors owned by the applicant must first be assessed for ad valorem tax purposes."

This section merely provides that no refund for State gasoline tax can be made to any applicant until the tractor owned by him has been assessed for ad valorem taxes. The contention has been made that before a refund can lawfully be made under the provisions of this Act, the tractor must be assessed for ad valorem taxes before the applicant files his claim for refund. In my judgment, there is no merit in this contention.

The purpose of this Act is clearly set out in Section 1 thereof:

"Section 1. The purpose of this Act is to promote agriculture in Alabama, and to encourage and foster the progress of the farmers of this State, by providing for a refund of a portion of the state tax paid on gasoline which is used in propelling or operating tractors used exclusively for agricultural purposes, or which is used in operating certain auxiliary engines attached to and made a part of certain farm machinery, thereby making it possible for Alabama farmers to use extensively mechanized equipment in competition with the farmers and agricultural interests of surrounding states."

It is to be specifically noted that the purpose of this act is to foster the progress of the farmer by granting him an exemption from the payment of part of the State tax on gasoline which is used in propelling or operating tractors used exclusively for agricultural purposes to the end that farms in Alabama may some day be extensively mechanized so as to enable the farmers to be in a better position to compete with farmers of the surrounding states.

It is to be further noted that it is not the purpose of this act to increase the revenue of the State by collecting more ad valorem taxes. This perhaps is a secondary purpose of the act as evidenced by Section 7(a), *supra*. However, this purpose can be accomplished by requiring a tractor

to be assessed for ad valorem taxes before a refund is made under the provisions thereof.

To further show that the contention made that the tractor must be assessed before a claim for refund may be lawfully filed is the wording of Section 5 itself. No mention of ad valorem taxes is made in that section. If the farmer complies with the provisions of Section 1 of the Act, the only other requirement, insofar as filing a lawful claim for refund is concerned, is that such claim must be filed before September 30 of the year in which the refund period ends. When the farmer has done this he has done all that is required of him in regard to filing his claim, and if the claim is filed before the deadline of September 30, then it is lawfully filed.

It is a fact that cannot be disputed that before a refund can be made under the provisions of this Act, the tractor must be assessed for ad valorem taxes. This requirement of the act relates to when the refund can be made and not to the time when the tractor must be assessed for ad valorem taxes.

Title 51, Section 53, Code of Alabama 1940, provides for making escape assessments for ad valorem taxes. When the provisions of this section have been complied with, the property is just as much on the tax assessment rolls as if the property owner had himself assessed his property at the proper time and in the regular manner.

You are, therefore, advised that a refund under this Act may be legally made when it appears that the claim for such refund has been made by the applicant within the time set out in Section 5 of the Act, and the Department of Revenue ascertains from said evidence secured by the Department or furnished by the applicant, that the tractor has actually been assessed for ad valorem taxes.

In the instant case, the tractor has actually been assessed for ad valorem taxes under the provisions of Section 53 of Title 51, Code of Alabama 1940, and in my opinion such assessment meets all the requirements of the Act.

My answer to your second question is in the affirmative. This would merely be a bookkeeping matter.

Since my answer to your question No. 1 is in the affirmative, it is not necessary that I answer the question submitted by Mr. Whiddon.

The interpretation which I have placed on this Act under the questions posed by you will meet all of the requirements of the Act, that is to say, the farmer will get his refund and the State will have the tractor placed on the assessment roll.

Yours very truly,

MacDONALD GALLION
Attorney General

June 11, 1959

Hon. Robert Newman, President
Alabama Association of Circuit
Court Clerks and Registers
Troy, Alabama

Hon. H. Harrison Hill
Clerk of the Circuit Court
Morgan County
Decatur, Alabama

Clerks of Circuit Courts—Costs and Fees—Workmen's Compensation—Statutes.

Although the Workmen's Compensation Act Title 26, Section 278, Code of Alabama 1940, as amended by Section 3 of Act 661, General Acts 1939, pages 1036, 1037) provides that the costs in settlement cases under the Workmen's Compensation Act shall not exceed two dollars to be borne by the employer, a later statute, specifically providing that said clerk's fee shall be in the amount of ten dollars, makes inoperative the limitation of costs to two dollars insofar as clerks' fees are concerned.

Opinion by Assistant Attorney General Sykes.

Gentlemen:

I have an inquiry from Hon. Robert Newman, President of the Alabama Association of Circuit Court Clerks and Registers, Troy, Alabama, under date of April 1, 1959, which is as follows:

"I would like an official opinion on the following: Are the clerks of Circuit Court entitled to \$10.00 or \$2.00 for settlements under Workmen's Compensation? Act No. 740, Acts of 1957 is in part as follows, 'for filing settlement under Workmen's Compensation Act, \$10.00' Title 26, Sec. 278 is in part as follows, 'the costs of the proceedings shall not exceed two dollars and be borne by the employer.' Lawyers handling the cases say that \$2.00 is all that can be charged. If your answer to this question is \$10.00, would the employer be liable for the difference on the cases filed after Jan. 20, 1959, if they had paid only \$2.00 cost?"

I also have an inquiry under date of May 11, 1959 from Hon. H. Harrison Hill, Clerk of the Circuit Court of Morgan County, Decatur, Alabama, which is as follows:

"I have a copy of an opinion dated December 31, 1958, by Asst. At-

torney General Sykes pertaining to fees and trial tax on Workmen's Compensation cases and the only question asked in said opinion is whether the trial tax shall be added to the ten dollars allowed clerks at the beginning of the new term beginning on January 20, 1959.

"I have shown the said opinion to an attorney who refuses to pay the said \$10.00 allowed at the present time, but has offered or tendered the \$2.00 as called for in the Workmen's Compensation Act, and he states that when the question is asked and answered pertaining to the direct clerk's fees of \$10.00 then he would abide by the opinion rendered. "It is my understanding that there has been, since the above opinion mentioned of December 31, 1958, another opinion rendered pertaining to the clerk's fees of \$10.00 being the correct charge. If there has been such an opinion rendered will you be so kind as to send me a copy as soon as possible in mimeograph form or otherwise so that I can charge the correct amount."

I do not find that this office has rendered an opinion on this subject subsequent to December 31, 1958.

In my opinion, the clerk of the circuit court is entitled to a fee of ten dollars for filing settlement under the Workmen's Compensation Act, and he is not entitled to two dollars. Such costs should be taxed by the court and collected as other costs.

Title 26, Section 278, Code of Alabama 1940, as amended by Section 3 of Act No. 661, General Acts 1939, pages 1036, 1037, provides for settlements between the parties in workmen's compensation cases. Under certain circumstances when the settlement is approved by the court, Title 26, Section 278, Code of Alabama 1940, as amended, *supra*, provides in part as follows:

"Upon such settlements being approved, judgment shall be rendered thereon and duly entered on the records of said court in the same manner and to have the same effect as other judgments or as an award if the settlement is not for a lump sum. The costs of the proceedings shall not exceed two dollars and shall be borne by the employer; such proceedings shall not be deemed subject to state trial, library or other tax, general or local . . . "

On the other hand, a later statute, Act No. 740, General and Local Acts 1957, page 1169, amends the civil schedule of fees for clerks of circuit courts. Among the fees provided for in Act No. 740, *supra*, is the following:

". . . for filing settlement under workmen's compensation act, ten dollars; . . . "

It is my view that insofar as Act No. 740, *supra*, is in conflict with

Title 26, Section 278, as amended, *supra*. that the last enacted provision, Act No. 740, should govern. It appears to me that the above quoted ten dollar fee was specifically designed to provide compensation to the clerk in those cases decided under Title 26, Section 278, as amended, *supra*.

It is my view, therefore, that the fee of the clerk should be in the amount of ten dollars for settlements filed on or after the beginning of the new term of circuit clerks, and that the provision for costs not to exceed two dollars is inoperative insofar as the clerks' fees are concerned.

In those settlements filed since the beginning of the new term of the circuit clerk where costs or fees of the clerk in the amount of only two dollars have been collected, in my opinion, the employer is liable to the clerk for the remainder (eight dollars) of said fees, unless costs have been otherwise taxed.

Very truly yours,

MacDONALD GALLION
Attorney General

June 17, 1959

Honorable Iva D. Sullivan
Tax Collector
Lowndes County
Hayneville, Alabama

Taxation—Ad Valorem Taxes—Tax Sales.

1. Sale of property assessed to life tenants does not effect title or interest of remaindermen.
2. Life tenant cannot defeat remainder estate.
3. Owner of life estate in real estate, whose life estate therein is sold for taxes, entitled to excess over sum bid necessary to pay amount ordered in decree of sale.

Opinion by Assistant Attorney General Payne

Dear Sir:

Your request for an official opinion, bearing date of May 21, 1959, is as follows:

"I hereby request that you give me your opinion and advise me the proper manner and way to proceed in a case with the following facts. "We have 455 acres of land in Lowndes County being assessed to two brothers, who only own a life interest in said property. They are refusing to pay taxes and requesting that it be sold for taxes. They have been advised by someone that they would get all the excess sum the land brought over above the taxes, and in this way defeat the remainder interests. They are urging the people to bid in the feeling that they would be paid the excess sum by me. Please give me your opinion as to whether or not my advertisement should show life interest in the land being sold for taxes or just advertise land as I do in other cases.

"Please give me your opinion as to their rights in any excess sum that might be bid at said sale. If you determine they have no rights in any excess sum, advise me the proper proceeding to take in handling the excess sum."

The "two brothers" being owners of the "life interest" in the 455 acres of land, it necessarily follows that when the property is put up for sale in payment of the delinquent ad valorem taxes that only the interest so assessed could be offered for sale. In selling the property you would be bound by the decree of sale of the Probate Court "that said real estate or so much thereof as may be necessary be sold for the payment of the said delinquent taxes . . ." Section 258, Title 51, Code of Alabama 1940. Section 263, Title 51, *supra*, imposes upon you, as tax collector, the duty to sell so much of the real estate "as is necessary to satisfy the decree under which it is sold . . ." Accordingly, your advertisement or notice of sale should set out specifically that it is only the "life interest" that is being offered for sale.

A sale of lands, under the circumstances related by you, cannot affect in any manner whatsoever the reversionary or remainder interest. Sales of land for the payment of delinquent ad valorem taxes does not encroach upon the right, title, or interest of the remainderman. — *Gunter v. Townsend*, 202 Alabama 160, 79 So. 644; *State v. Clarke*, 240 Alabama 362, 199 So. 543; *Downing v. City of Russellville*, 241 Alabama 494, 3 So.2d 34; *Bishop et al v. Johnson*, 242 Ala. 551, 7 So.2d 281; *Finerson et al v. Hubbard*, 225 Ala. 551, 52 So.2d 506; Biennial Report of Attorney General 1930-32, page 939. Section 276, Title 51, *supra*, with respect to the deed delivered to the purchaser by the Judge of Probate provides that "it shall not convey the right, title, or interest of any reversioner or remainderman therein."

In passing, let me point out that under the law of Alabama no tenant for life can by his acts defeat a "remainder" interest. Title 47, Section 63, Code of Alabama 1940.

I turn now to that portion of your request relative to "any excess

sum that might be bid at said sale." Should there be an excess bid above the amount required by the decree of sale and costs, and, expenses subsequently occurring, it should be paid over to the "owner" of that interest sold under the decree of the probate court. — Section 275, Title 51, supra.

Yours very truly,

MacDONALD GALLION
Attorney General

June 17, 1959

Honorable H. Clyde Preddy, Sr.
Chairman, Phenix City Water Works
Phenix City, Alabama

Insurance—Municipalities.

A municipal water works board created under Title 17, Sections 394 through 402, Code of Alabama 1940, as amended, may purchase group insurance policies of life and hospital insurance for its employees, who elect to accept same, and pay a portion or all of the premium for such insurance.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of June 5, 1959, is as follows:

"The Water Works Board of the City of Phenix City, Alabama is a public corporation chartered in accordance with the provisions of Title 37, Article 5, Sections 394 — 402. In accordance with powers therein conferred the City of Phenix City, Alabama did lease to the said board its municipally owned Water and Gas Distribution System to be operated by the Board and all property of the system was transferred to the Board during the term of the lease now in effect.

"The Board has been advised by its Attorney that it does not have the authority to purchase group policies of life insurance, hospital insurance and pay any portion of the premium thereof under the provisions of Title 28, Sections 347 — 351(7), and further that the general power to insure as contained in Title 37, Section 398 does not impliedly permit the board to indirectly do the same acts permitted in the provisions of Title 28, Sections 347-351(7), and pay such portion of the premium as the board might desire under the above referred to General Power to Insure.

"We would like your opinion on the following question:

"1. May a public corporation as defined in Article 5, Title 37, Sections 394—402 purchase group policies of life or hospitalization insurance and pay a portion of the premiums for its employees under the general grant of power to insure as contained in Section 398 of Title 37, or under any other power the corporation might have?

"I would appreciate your answer to this question at your convenience and be assured that we will appreciate your work in this matter."

Your question is answered in the affirmative.

Section 1 of Act No. 376, General Acts 1947, page 267, as last amended by Act No. 34, Regular Session 1959, approved June 9, 1959, reads in part as follows:

" . . . The council, commission or similar governing body of each municipal corporation; the board of directors of each incorporated municipal board; the court of county commissioners, board of revenue or similar governing body of each county; the board of education of each city; the board of education of each county; and the board of trustees, board of managers, board of control or similar governing body of each state agency or institution of education, learning, training or correction, or for the delinquent (sic), insane, sick, deaf, dumb, blind, needy, juvenile or aged now existing or hereafter established, shall have power and authority to contract for and obtain and maintain policies of group life, health, accident and hospitalization insurance, or any one or more of them, and shall have power and authority to contract for and obtain and maintain individual annuity contracts, retirement income policies or group annuity contracts to provide a retirement plan, for the benefit of such of the officers and employees of such municipality, incorporated municipal board, county, board, agency or institution as may be determined by such governing body and as shall or may elect to accept the same, and who have authorized in writing such governing body to make deductions from their compensation to pay premiums on any such policy or policies if such premiums be payable in whole or in part by such officer or employee. . . . "

Section 3 of Act No. 376, as amended, *supra*, reads as follows:

"Section 3. That such governing body shall have authority to pay all or such part of the premium for such insurance as such governing body shall determine out of any available funds, and to deduct that part of the premium, if any, which is to be paid by such officer or employee from the salary or wage of such officer or employee as may be authorized by him and to pay such deductions together with the remainder due of such premium to the insurer issuing such policy in full payment of the premium."

Therefore, I am of the opinion that the Water Works Board of the City of Phenix City, being an incorporated municipal board within the purview of the above, is authorized to purchase the insurance to which your request refers for its employees who elect to accept such insurance, and to pay a portion or all of the premium for such insurance.

Very truly yours,

MacDONALD GALLION
Attorney General

June 18, 1959

Honorable Winston Stewart
Executive Secretary

Association of County Commissioners of Alabama
17 South Union Street, Montgomery 4, Alabama

Counties—Gasoline Fund—Highway and Highway Department—
Municipalities—Opinions Overruled, Modified or Distinguished—
Road and Bridge Fund—Streets—Words and Phrases.

1. Act No. 50, Special Session 1959, approved February 24, 1959, authorizes a county to expend its Public Highway and Traffic Fund only for public road and bridge purposes.
2. Such fund may be expended on that part of farm-to-market roads located within municipalities as well as roads located within the county.
3. Act No. 50, supra, has retroactive as well as prospective operation.
4. A county may expend its share of gasoline tax levied by Title 51, Section 647, Code of Alabama 1940, as amended, to construct and maintain streets within a municipality of the county.
5. A county must obtain the consent of a municipality prior to constructing or maintaining a street therein.
6. Streets constructed or maintained by a county remain under the control of the municipality in which they are located.
7. The term "streets" includes gutters, sewers, water mains,

sidewalks and other items ordinarily connected with such term.

8. A municipality may agree to reimburse a county for work done on its streets.

9. Opinions reported in Quarterly Reports of Attorney General, Vol. 87, page 15, Vol. 89, page 16, Vol. 90, pages 7 and 21, Vol. 91, page 20, and Vol. 92, pages 22 and 45, distinguished.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of March 18, 1959, is as follows:

"At the recently-concluded special session of the Legislature two bills were passed which have particular significance to the operation of county government. It is important that the various county governing bodies be advised as to the proper interpretation of the provisions of these acts and, in my capacity as Executive Secretary of the Association of County Commissioners of Alabama, I would like to respectfully request your opinion as to the following matters.

"The first of such acts is Act No. 50 of the recent special session and has to do with the expenditure by the several counties of the funds derived from fees, excises, or license taxes levied by the State relating to the registration, operation, or use of motor vehicles upon the public highways and also to the expenditure of money derived from fees, excises, or license taxes, levied by the State relating to funds used for propelling such vehicles. The act states that the counties are authorized to expend these funds for the cost of constructing, reconstructing, maintaining, and repairing of public roads and bridges. Section 2 of such act states that it is the intention of the Legislature, by its passage, to implement the provisions of Amendment 93 to the Constitution of Alabama 1901.

"As you are no doubt aware, a former opinion of the office of the Attorney General addressed to the Honorable Otis R. Emmons, Sheriff of Escambia County, Alabama, under date of June 17, 1957, and reported in Quarterly Report of Attorney General, Volume 87, page 26, contained a holding to the effect that Amendment 93 to the Constitution of Alabama 1901 is not self-executing but is a mere limitation and thereby requires the enactment of legislation to implement such amendment. It is my understanding that Act No. 50, *supra*, was enacted for the purpose of implementing such amendment.

"I should point out that subsequent to the adoption of Amendment 93, *supra*, there was established in each of the several counties by instruction of the Department of Examiners of Public Accounts a fund

known as the Public Highway and Traffic Fund. Such fund consists of the revenues accruing to the county as the county's portion of the license tax levied upon motor vehicles and revenue arising from the sale of driver's licenses and learner or instructor permits. All of these go to make up the Public Highway and Traffic Fund of the county and it is to this county fund which I now refer in my following inquiries.

"I would request that you advise as to the following:

"1. May money now held by the several Counties of the Public Highway and Traffic Fund of the county now be expended for the cost of constructing, reconstructing, maintaining, and repairing public roads and bridges of the county?

"2. Is the use of the money constituting the public highway and traffic fund of the county restricted to the uses set out in Act No. 50, supra, that is, the constructing, reconstructing, maintaining and repairing of public roads and bridges?

"3. Should you conclude that this money may now be used for the purposes set out in Act No. 50, supra, may such money be used for the constructing, reconstructing, maintaining and repairing of public roads and bridges situated within the corporate limits of municipalities of the county?

"4. Section 3 of Act No. 50, supra, provides that the provisions thereof are retroactive. Would this mean that should any of the several counties heretofore have expended monies from the public highway and traffic fund for the purposes named but prior to the enactment of enabling legislation that such counties would be protected from monetary liability for such actions?

"The second act of the 1959 special session of particular interest to the county governing bodies is Act No. 51. This act is entitled an act to authorize the governing body of each county to expend the proceeds of the State gasoline tax levied by Title 51, Section 647, Alabama Code of 1940, as amended, distributed to such county pursuant to Title 51, Sections 655 and 657, Alabama Code of 1940, as amended, for construction and maintenance of streets within the corporate limits of any municipality within such county. You are perhaps aware of certain opinions of the Attorney General rendered during 1957 and 1958 pertaining to the above matter. It is my understanding and belief that this particular act is a result of such opinions and I desire to request your opinion as to the situation now existing with reference to the use of gasoline tax money within the corporate limits of the municipalities of the several counties. The former opinions of the Office of the Attorney General which are pertinent to this inquiry are those rendered the Honorable John F. Watkins, Legal Counsel of the Alabama League of Municipalities, under date of June 10, 1957

and October 21, 1957; the Honorable Clarence F. Rhea, County Attorney, Board of Revenue, Etowah County, under date of January 10, 1958; the Honorable B. M. Walton, a member of the Court of County Commissioners, Butler County, under date of January 30, 1958, and the Honorable Walter D. Ritch, Chairman, Board of Revenue, Marion County, under date of July 23, 1958.

"I would request that you review such opinions in the light of Act No. 51, *supra*, and advise me as to the following:

"1. Are the county governing bodies of the several counties now authorized in their discretion, to use and expend the county's portion of the state gasoline tax for the construction and maintenance of streets within the corporate limits of municipalities of the county?

"2. May the several county governing bodies now construct or maintain streets of the municipalities of the county through the use of the county's portion of the state gasoline tax either by contract with private contractors, use of county forces, equipment and supplies or through mutual agreement and contract with the municipalities concerned?

"3. In view of Title 23, Section 49, Code of Alabama 1940, must the permission of the governing body of the municipality concerned be obtained prior to the construction or maintenance of any streets within the municipality by the county?

"4. Must the streets so constructed or maintained by the county within the corporate limits of the municipality become a part of the public road system of the county or do such streets remain city streets, subject to jurisdiction, control and maintenance of the municipalities?

"5. Does the grant of authority for 'construction and maintenance' include within its meaning the rights and authority to expend the county's portion of the state gasoline tax for such additional improvements as gutters, storm sewers, water mains, sewage mains, sidewalks and such other items as are usually considered as a part of or a necessary preliminary to the construction of a municipal street?

"6. May a county governing body now enter into a contract or agreement with a municipality of the county whereby the county, for a stipulated reimbursement, agrees to construct, repair or maintain streets within a municipality of the county using equipment, labor and supplies purchased or paid from the county's portion of the state gasoline tax?

"I would appreciate your answer to the above inquiries at your earliest convenience as these are matters of pressing importance to the governing bodies of all of the counties of the state."

I will first consider your four questions pertaining to Act No. 50, Special Session 1959, approved February 24, 1959.

The opinion of this office reported in Quarterly Report of Attorney General, Vol. 87, page 26, to which your request refers, holds that Amendment 93 to the Constitution of Alabama 1901, is not self-executing but is merely a limitation upon the use of the funds derived from the sources specified therein.

Section 1 of Act No. 50, *supra*, reads as follows:

"Section 1. The several counties of the State are hereby authorized to expend the funds derived from fees, excises, or license taxes, levied by the State, relating to the registration, operation, or use of motor vehicles upon the public highways, and also the money derived from any fees, excises or license taxes, levied by the State, relating to fuels used for propelling such vehicles, for the cost of constructing, reconstructing, maintaining and repairing of public roads and bridges."

Since Act No. 50, *supra*, provides that a county may expend the funds derived from fees, excises, or license taxes, levied by the State, relating to the registration, operation or use of motor vehicles upon public highways to construct, reconstruct, maintain and repair public roads and bridges your first question, pertaining to Act No. 50, *supra*, is answered in the affirmative.

Since Act No. 50, *supra*, specifically provides that the funds specified in said Act may be used to construct, reconstruct, maintain and repair public roads and bridges, I am of the opinion that said Act does not authorize the use of such funds for any other purpose. However, Act No. 50, *supra*, is permissive and not restrictive. It does not limit county expenditures of said funds if there is other statutory authority authorizing the expenditure of such funds in a manner which does not conflict with Amendment 93, *supra*. Therefore, your second question pertaining to said Act is answered in the negative.

As pointed out in the opinion of this office reported in Quarterly Report of Attorney General, Vol. 90, page 21, highways located within the corporate limits of a municipality are streets as distinguished from roads unless the Legislature authorizes such highways to be considered as roads. Cf. Quarterly Report of Attorney General, Vol. 89, page 16.

Act No. 329, General Acts 1943, page 311, known as the Farm-to-Market Road Act of 1943, as amended by Act No. 41, General Acts 1945, page 47, reads in part as follows:

"Section 1. The words "county roads" as herein used shall mean all public roads (including bridges) within a county and continuing into or through the corporate limits of any city or town in such county

which are not a part of the State Highway System and which are sometimes called "farm to market roads." . . . "

A road may be constructed within a municipality under the provisions of Act No. 329, as amended, *supra*; however, I know of no other statute authorizing a county to construct a road within the corporate limits of a municipality.

Your third question, pertaining to Act No. 50, *supra*, is answered in the affirmative, as to public roads and bridges but not to streets. You will note that under the provisions of Act No. 50, *supra*, the funds to which your said third question refers may not be used to construct, reconstruct, maintain or repair "streets" within a municipality since said Act authorizes the use of such funds to defray the costs of such work on "roads and bridges." Cf. Quarterly Report of Attorney General, Vol. 90, page 7.

Whether a statute operates retroactively as well as prospectively is a matter of legislative intent. *Fuqua v. Fuqua*, Ala., 104 So. 2d 925. By virtue of Section 3 of Act No. 50, *supra*, the provisions of said Act are expressly made retroactive.

Therefore, your fourth question, pertaining to Act No. 50, *supra*, is answered in the affirmative, except as to such expenditures as may have been made on city streets.

I will now consider your six questions, pertaining to Act No. 51, Special Session 1959, approved February 24, 1959.

Section 1 of Act No. 51, *supra*, reads as follows:

"Section 1. That the Court of County Commissioners, Board of Revenue, County Commission, or other governing body of each of the Counties, is hereby authorized to use or expend the proceeds of the State gasoline tax levied by Title 51, Section 647, Alabama Code of 1940, as amended, distributed to such County pursuant to Title 51, Sections 655 and 657, Alabama Code of 1940, as amended, for the construction and maintenance of streets within the corporate limits of any municipality located within such county, anything in Title 51, Sections 646 to 665, Alabama Code of 1940, as amended, to the contrary notwithstanding.

Since Act No. 51, *supra*, authorizes a county to expend its share of the gasoline tax, levied by Title 51, Section 647, Code of Alabama 1940, as amended by Act No. 44, General and Local Acts 1955, page 73, to construct or maintain streets within the corporate limits of any municipality located within such county, your first question, pertaining to Act No. 51, *supra*, is answered in the affirmative. Cf. Quarterly Report of Attorney General, Vol. 91, page 20.

Since a county may now use its share of said gasoline tax for the purposes stated hereinabove, your second question, pertaining to Act No. 51, *supra*, is answered in the affirmative.

Title 23, Section 49, Code of Alabama 1940, reads as follows:

"§ 49. ROAD IN MUNICIPALITIES. — The court of county commissioners or like governing body of any county, with the consent or permission of the city council or governing body of any municipality, may establish, construct and maintain any road, street or bridge within the corporate limits of such municipality, except in cases where the highway department has jurisdiction over such road, street or bridge."

I am of the opinion that Section 49, *supra*, requires that a county obtain the consent or permission of the governing body of a municipality prior to constructing or maintaining any streets within the corporate limits of such municipality. See Quarterly Report of Attorney General, Vol. 55, page 125.

Therefore, the third question, pertaining to Act No. 51, *supra*, is answered in the affirmative. Biennial Report of Attorney General, 1932-34, page 329.

The authority to control its streets is granted to a municipality by Title 37, Chapter 14, Code of Alabama 1940, as amended by Act No. 450, General and Local Acts 1949, page 655. Although a county may expend certain funds to construct and maintain streets within the corporate limits of a municipality located within such county, I know of no statute authorizing such county to assume control of such streets.

Therefore, in answer to your fourth question, pertaining to Act No. 51, *supra*, I am of the opinion that such streets remain municipal streets, subject to the jurisdiction, control and maintenance of the municipality in which they are located.

In the case of *Cloverdale Homes v. Town of Cloverdale*, 182 Ala. 479, 62 So. 712, the Supreme Court of Alabama held that the word "street" means the whole surface and so much of the depth as is or can be used for the ordinary purpose of a street, enabling the public authorities to raise it and to lay gas, water and sewer pipes. See also *Starego v. Sobolowski, et al*, 21 N. J. Sup. 389, 91 Atl. 2d 263. The term "street" has been held to include sidewalks. See *Town Com'rs of Centreville v. County Com'rs of Queen Anne's County*, 199 Md. 652, 87 Atl. 2d 599; and *Gates v. City Council of Bloomfield*, 243 Iowa 1, 50 N. W. 2d 578. The opinion rendered in *City Council of Montgomery v. Foster*, 133 Ala. 587, 32 So. 610, reads in part as follows:

". . . By authoritative definition as well as common usage, the term

'street' applies to the whole public thoroughfare, including sidewalks; the latter constituting parts of the street reserved to pedestrians. . ."

It is well understood, of course, that words used in a statute often have divers meanings, depending upon the connection in which they are used. I find nothing in the language of Act No. 51, *supra*, however, which indicates that the word "street" was used in a narrow or limited sense as was the case in *City of Mobile v. Harker*, 204 Ala. 26, 85 So. 425; and *City of Birmingham v. Carson*, 209 Ala. 428, 96 So. 333.

Based on the above authorities your fifth question, pertaining to Act No. 51, *supra*, is answered in the affirmative.

Title 37, Section 657, Code of Alabama 1940, and Section 49, *supra*, authorize a municipality to enter into a contract with a county of the type to which you refer in your sixth question, pertaining to Act No. 51, *supra*. Cf. Biennial Report of Attorney General, 1932-34, page 329, *supra*. Since a county may use its share of the gasoline tax, levied by the State, to construct and maintain streets within the corporate limits of a municipality, said question is answered in the affirmative.

The opinions reported in Quarterly Reports of Attorney General, Vol. 87, page 15, Vol. 89, page 16, Vol. 90, pages 7 and 21, Vol. 91, page 20, and Vol. 92, pages 22 and 45, are no longer fully applicable due to subsequent legislation.

This opinion must be read in the light of the fact that your questions are of an abstract nature. When a particular factual situation is presented to this office, questions relating thereto must be decided on the facts involved.

Very truly yours,

MacDONALD GALLION
Attorney General

June 23, 1959

Honorable Guy D. Roberts, Chairman
Morgan County Board of Revenue and Control
Decatur, Alabama

Counties—Employment, Employers and Employees—Officers
and Offices—Social Security.

1. Deputy clerk who is hired, paid and controlled by fee-

basis sheriff is considered county employee solely for purpose of being permitted to obtain social security coverage.

2. No legal liability is imposed upon county for social security contributions not contributed, deducted or reported to county governing body by fee-basis sheriff, now deceased, for credit of said deputy clerk in his office who was eligible for social security coverage.

Opinion by Assistant Attorney General Mentz.

Dear Sir:

Your request for an official opinion bearing date of April 17, 1959, is as follows:

"We are in receipt of a copy of a letter from your office dated March 1, 1951, addressed to Hon. John C. White, Association of County Commissioners, concerning O.A.S.I. contributions from employees of county officials when the officials are paid by fees. The letter indicates that the fee basis official is to deduct one half of the tax from his employee and pay the other one half himself, turning the whole amount over to the county for reporting.

"We have one instance where an officer on a fee basis had one employee on which he failed to deduct or pay the tax to the county. This official has died and has been replaced. The employee makes no claim that she should have been covered inasmuch as her husband is fully covered in his own employment. This employee was hired by the official, worked for him alone, and was under no direction or control by Morgan County.

"The next to last paragraph of the letter referred to states as follows:

"The rule to be followed is that the funds from which the employee's compensation is paid shall be the fund from which the matching contribution is made."

"Your opinion is respectfully requested on the following question:

"1. Inasmuch as the employee in question served at the pleasure of the elected official, and was under no control of the County, was such employee an employee of the County for the purpose of the O.A.S.I. laws?

"2. If your answer to Number 1 is in the affirmative, what is the liability of the County for money not deducted or reported by an elected official on a fee basis when such official is deceased?"

Your supplemental letter, dated April 27, 1959, reads in pertinent part:

"The officer in question was the Sheriff of Morgan County. He was given express statutory power to employ certain deputies and jailers. Some of these employees were paid by the County and some by the Sheriff himself. . .

"The employee in question was a lady who worked in the office and was known as the Deputy Clerk. She was under the direction and control of the Sheriff and paid by him."

This office stated, in letter dated March 4, 1955, to Honorable G. W. L. Smith, Attorney for Escambia County Board of Revenue, Brewton, Alabama, that tax assessors and tax collectors are county officials, and that the employees in their offices, being there to perform duties of an official nature for the county, should be considered county employees for social security purposes. However, it was pointed out that where the tax assessor and tax collector are compensated by fees, no money comes from the county which thus has no way to withhold contributions and has nothing upon which to base the matching portion of the contribution, and so such fee-basis officials must act both as employers and employees.

It was stated in this office's letter dated March 1, 1951, to Honorable John C. White, Secretary, Association of County Commissioners, Montgomery, Alabama, to which you make reference, that a fee-basis county officer, who is covered under the state-county social security agreement, is required to pay the entire amount of his own social security contribution. It was also stated that where a county officer on a fee basis employs clerks, stenographers and other employees, who are paid from funds received as fees, he should deduct the appropriate amount for social security contribution purposes from each employee's pay and match that deduction with a contribution in like amount. It was further stated that each officer on a fee basis should report and turn over such contributions to the officer of the county designated as the person in charge of social security who, in turn, should report such contributions to State Agency for Administration of Social Security.

In a letter dated July 19, 1956, to Honorable J. D. Moody, President, Cullman County Commission, Cullman, Alabama, after outlining the procedure to be followed by a fee-basis probate judge in withholding social security deductions from his employees' salaries and transferring the amount withheld to the county, this office stated that the probate judge, rather than the county, would be liable for the employer's matching contribution.

Sheriffs, treasurers, registers in chancery and clerks of the circuit courts are also county officers (In re Opinions of Justices, 225 Ala. 359, 143 So. 345), and, for social security purposes, they and the employees in their offices are subject to the same rules which are applicable to tax assessors, tax collectors and probate judges.

In answer to your first inquiry, it is my opinion that a deputy clerk

who is hired, paid, and controlled exclusively by a fee-basis sheriff, is an employee of the county solely for the purpose of being permitted to obtain coverage under the state-county social security agreement.

With respect to your second inquiry, it is my opinion that there is no legal liability imposed upon the county governing body for social security contributions which were not contributed, deducted or reported to the proper county officers by an elected fee-basis sheriff, who is now deceased, for the credit of a deputy clerk in the sheriff's office who was eligible for social security coverage as a county employee. The county governing body merely serves as a medium for the reporting and transmittal to State Agency for Administration of Social Security Act of social security contributions which an elected fee-basis county officer is responsible for making, deducting and reporting.

Very truly yours,

MacDONALD GALLION
Attorney General

June 24, 1959

Honorable J. O. English
Judge of Probate
Coffee County
Elba, Alabama

Counties—Gasoline Fund—Highways and Highway Department—
Municipalities—Streets.

1. A county may construct and maintain streets within a municipality of the county.
2. The State may maintain, repair, construct and reconstruct only those municipal streets which are under the jurisdiction of the State Highway Department.
3. A county and a municipality located in such county may jointly construct and maintain the streets of such municipality.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, bearing date of May 5, 1959, is as follows:

"For some time now we have been having requests by the governing bodies of incorporated cities and towns in Coffee County to improve, by grading, draining and black-topping, various streets within the corporate limits of said cities and towns at county expense.

"We understand that it is now legal for the county to carry out such improvements on streets as mentioned above within the corporate limits of cities and towns being within the county provided said street is a part of some particular highway leading into the city or town and being under construction or improvement. We respectfully request your opinion on the following questions in connection with this:

"(a) Would it be legal for Coffee County, at its own expense, to improve or construct by grading, draining and black-topping, streets within the corporate limits of cities and towns in said county when such streets are not a part of any highway which is undergoing construction or improvement?

"(b) Is it legal or permissible for the State to participate with the county in the expenses involved in a project as outlined in question (a)?

"(c) Is it legal for the county, participating with the state and a city or town within the county, to carry out a project as outlined in question (a)?

Title 23, Section 49, Code of Alabama 1940, authorizes a county to establish, construct or maintain streets within the corporate limits of a municipality with the consent of such municipality, except in cases where the Highway Department has jurisdiction of such streets.

By virtue of Act No. 51, Special Session 1959, approved February 24, 1959, a county may expend its share of the gasoline tax, levied by Title 51, Section 647, Code of Alabama 1940, as amended by Act No. 44, General and Local Acts 1955, page 73, to construct or maintain streets within the corporate limits of any municipality located within such county. Opinion to Honorable Winston Stewart, Executive Secretary, Association of County Commissioners of Alabama, under date of June 18, 1959.

There is nothing in your request to indicate that the streets to which you refer are under the jurisdiction of the Highway Department. Therefore, your question lettered (a) is answered in the affirmative.

Act No. 284, General Acts 1949, page 408, authorizes the State to maintain, repair, construct and reconstruct only those municipal streets which constitute the route of connection between roads in the Alabama State Highway System, See also Title 23, Section 3, Code of Alabama 1940, as amended by Act No. 887, General and Local Acts 1951, page 1530; and Quarterly Report of Attorney General, Vol. 35, page 35.

Since your request does not indicate that the municipal streets, to which you refer, connect State roads in said Highway System, your question lettered (b) is answered in the negative.

Title 37, Section 657, Code of Alabama 1940, authorizes a county and a municipality to enter into a contract under the terms of which each may pay a part of the cost of the street work contemplated by such contract. See opinion to Honorable Winston Stewart, *supra*. However, as pointed out hereinabove, the State may only pay the cost of work performed on municipal streets which are under the jurisdiction of the State Highway Department.

Therefore, your question lettered (c) is answered in the affirmative as to municipalities and in the negative as to the State.

Very truly yours,
MacDONALD GALLION
Attorney General

June 25, 1959

Honorable C. C. Horton, Director
Department of Veterans Affairs
State Office Building
Montgomery, Alabama

Counties—Funds—Opinions Overruled, Modified or Distin-
guished.

1. The county governing bodies may in their discretion expend county funds for the purchase, erection and display of the United States flag, the State of Alabama flag and the Confederate flag, or any one or all of them, on county courthouse property.
2. The opinion reported in Quarterly Report of Attorney General, Volume 31, page 99, overruled.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of June 15, 1959 is as follows:

"Reference is to an opinion of the Attorney General contained in Volume 31 of the Quarterly Report at page 99, concerning the authority of County Boards of Revenue or other governing bodies to make purchases of United States flags or flags of the State of Alabama for display at or near the Courthouses in Alabama. Not having

the volume referred to immediately at hand I am unable to quote the exact verbiage.

"On behalf of the citizens of Alabama, especially that segment composed of our war veterans, I respectfully ask for a review of the cited opinion. It is my belief that it is entirely within the bounds of propriety and certainly in keeping with the traditions of this state and our nation, to encourage the display of the national colors. I feel that to do so is conducive to the better welfare and patriotism of our citizens and that governing bodies of counties should have the right to purchase from public funds the flag of Alabama and the flag of the United States of America.

"It is sincerely hoped that a review of the applicable statutes will lead to a more realistic and reasonable opinion. Your attention to this request for an official opinion will be sincerely appreciated."

In an opinion of this office reported in Quarterly Report of Attorney General, Vol. 31, page 99, it was ruled that the county commissioners or boards of revenue may not appropriate county funds for the purchase of either the United States flag or the State flag for display on courthouse lawns.

This opinion is hereby overruled.

In former opinions of this office the expenditure of county funds has been approved for the following purposes:

1. Electricity consumed by the lights erected on the courthouse square. Quarterly Report of Attorney General, Vol. 78, page 18.
2. For the beautification of its highways. Quarterly Report of Attorney General, Vol. 16, page 156.
3. To "decorate" a county public library building. Quarterly Report of Attorney General, Vol. 14, page 286.
4. Installation of venetian blinds in the county courthouse for protection of county employees from glare of the sun. Quarterly Report of Attorney General, Vol. 17, page 337.
5. Grass seeds, shubbery, rose bushes and fertilizer for courthouse lawn. Quarterly Report of Attorney General, Vol. 19, page 8.

In this latter opinion it was stated that it is the generally accepted belief that public buildings and grounds require a reasonable amount of ornamentation appealing to the esthetic sense of man, such ornamentation, or "beautification" if incidental merely, may be properly provided at public expense.

The county has the authority to direct and control the property of the county. Title 12, Section 12, Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 560. This power, this office has ruled, includes the power to maintain county property in such state as to be functional, attractive and safe. Vol. 78, supra.

The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation and thereby create that continuity of a treasured common life which constitutes a civilization.

The United States flag has been said to be the symbol of the Nation's power, the emblem of freedom in its truest, best sense. It signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against arbitrary powers; and absolute safety for free institutions against foreign aggression. *Halter v. Nebraska*, 205 U. S. 34, 51 L.Ed. 696.

Much of the above and more may be said of our State flag. Even the school children of Alabama face the flag, extend the right hand in saluting and say: "Flag of Alabama, I salute you and pledge to you my love, my loyalty and my life." Volume 1, page 219, "The Story of Alabama." Both the United States flag and the flag of the State of Alabama are required to be displayed every day on which school is in session, at some suitable place about the school building. Title 52, Section 549, Code of Alabama 1940.

"We live by symbols" and the display of one or both said flags on the courthouse lawn tends to unify sentiment and evoke in all that see appreciation of the State's and Nation's hope and dreams, its sufferings and sacrifices. *Minersville School Dist. v. Gobitis*, 310 U. S. 586, 84 L.Ed. 1375. Such display is for the public welfare and contributes to the proper conception of dutiful and patriotic citizenship.

Much of what has been said above applies with equal force to the Confederate flag or ensign. Indeed, the Legislature has regarded all of the above flags with such reverence as to provide penalties for their mutilation or desecration. Title 14, Section 190, Code of Alabama 1940.

I am of the opinion, therefore, that county governing bodies may in their discretion use county funds for the purchase, erection and display of any one or all said flags on county courthouse property.

Yours very truly,

MacDONALD GALLION
Attorney General

INDEX

QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE
PERIOD FROM APRIL 1, 1959 THROUGH JUNE 30, 1959

VOLUME 95

—A—

ABSENTEE BALLOTS

Register on salary receives fee for handling 28

ACTS (GENERAL AND LOCAL):

GENERAL ACTS 1939

Page 1064 22

GENERAL ACTS 1949

Page 408 57

Page 991 18

GENERAL AND LOCAL ACTS 1951

Page 1385 31

GENERAL AND LOCAL ACTS 1953

Page 1136 12

GENERAL AND LOCAL ACTS 1957

Page 450 17

Page 1169 41

Page 1173 37

GENERAL AND LOCAL ACTS, SPECIAL SESSIONS, 1959

Acts Number 50 and 51 47

Act Number 51 57

AD VALOREM TAXES

Exemption—not extended to compressor station	8
Sale of life estate for	43

ALABAMA STATE DOCKS

Employees hospital insurance—amount paid by state	17
---	----

ASSESSMENTS

Ad valorem tax—Tractor—not necessary for gasoline tax refund	37
---	----

—B—**BANKS AND BANKING**

Repayment of installment loans	31
--------------------------------------	----

—C—**CENSUS**

Type which may effect change in form of municipal government	12
---	----

CLERKS OF CIRCUIT COURTS:

Fees in workmen's compensation cases	41
Paid salary—no extra compensation for inferior court duties	28

CODE OF ALABAMA 1940:

Title 17

Sections 394-402, as amended	45
------------------------------------	----

Title 23

Section 49	57
------------------	----

Title 37

Section 5	12
-----------------	----

Title 41

Section 211	20
-------------------	----

Title 51

Section 3 as amended	8
Section 618	10
Section 834	34

Title 52

Section 100 as amended	35
------------------------------	----

CONTRACTS

Between county and corporation where majority stockholder a member of governing body	20
---	----

CORPORATIONS

Contracts with county where majority stockholder member of governing body	20
Taxes — stockholders not personally liable for	15

COSTS AND FEES

Circuit Clerks — in workmen's compensation cases	41
Register on salary receives fee for absentee ballot duties	28

COUNTIES

Ad valorem taxes — no exemption to compressor station	8
Construction and maintenance of city streets	57
Construction and maintenance of city streets	47
Contracts with corporation where majority stockholder is member of county governing body	20
Employee paid by fee basis official may be county employee for social security purposes	54
May purchase and display flags	59
Social Security contributions — Funds paid from	7

COUNTY BOARDS OF EDUCATION

School trustees — selection from nominees	35
---	----

—D—

DEEDS

Filing tax — how computed where grantor is one of the grantees	9
---	---

—E—

EMPLOYMENT, EMPLOYERS AND EMPLOYEES

Employee of fee basis public official may be county employee for social security purposes	54
--	----

EXEMPTIONS

No ad valorem tax exemption to compressor station	8
Pulpwood Chips — from Motor Carrier Act	22
State and county taxes — municipal industrial development board	18

—F—

FILING TAX

Amount where grantor is one of the grantees	9
---	---

FINES

Distribution of fine for failure to obtain licenses	34
---	----

FUNDS

County—may be used to purchase and display flags	59
County social security contributions—Fund paid from	7

—G—

GASOLINE FUND

Use for construction and maintenance of city streets	47
Use for construction and maintenance of city streets	57

GASOLINE TAX

Refund—Assessment and payment of tractor ad valorem taxes not a condition precedent	37
--	----

—H—

HIGHWAYS AND HIGHWAY DEPT.

Construction and maintenance of city streets	57
--	----

Use of county funds to construct and maintain city streets	47
--	----

—I—

INFERIOR COURTS

Circuit Clerk on salary receives no compensation for inferior court duties	28
--	----

INSURANCE

State Docks employees hospital insurance—amount paid by state	17
The city water works board may pay premiums for employees	45

—L—

LICENSES

Distribution of fine paid for failure to obtain	34
Municipal—contract motor carrier not subject to	23
Vending machines—penalty for delinquency	25

LOANS

Repayment of installment loans	31
--------------------------------------	----

—M—

MOTOR CARRIERS

Municipal license	23
“Pulpwood chips” classified as “pulpwood”—exempt from Motor Carrier Act	22

MUNICIPALITIES

County and State construction and maintenance of streets	57
De facto Council—Acts valid	12
Government form change effected by census—time of change	12
Industrial development board exempt from state and county taxes	18
License—Contract motor carrier not subject to	23
Streets—Construction and maintenance by counties	47

Type of census which may effect a change in the form of government	12
Water Works Board may pay premiums for employees' insurance	45

—O—

OFFICERS, OFFICES

Employee of fee basis official may be county employee for social security purposes	54
---	----

OPINIONS OVERRULED, MODIFIED OR DISTINGUISHED

Letter opinion—March 23, 1959 to Mrs. Ethel Coleman	28
Quarterly Report, Volume 31, Page 99	59
Quarterly Report, Volume 87, Page 15	47
Quarterly Report, Volume 89, Page 16	47
Quarterly Report, Volume 90, Pages 7 & 21	47
Quarterly Report, Volume 91, Page 20	47
Quarterly Report, Volume 92, Pages 22 & 45	47

—P—

PENALTIES

Vending machines license delinquency	25
--	----

—R—

REFUND

Gasoline Tax—Assessment and payment of ad valorem taxes not a condition precedent	37
--	----

REGISTERS

Paid salary—Receives fee for absentee ballot duties	28
---	----

ROAD AND BRIDGE FUND

Use to maintain and construct city streets	47
--	----

—S—

SCHOOLS

Selections of trustees from six nominees	35
--	----

SCHOOL TRUSTEES

Selection by local board from six nominees	35
--	----

SOCIAL SECURITY

County contributions—Fund paid from	7
Employee of official may be county employee for social security purposes	54

STATUTES

Subsequent inconsistent act amends prior act by implication	41
---	----

STREETS

Construction and maintenance by county	47
County and State construction and maintenance	57

—T—

TAXATION

Corporate stockholder not personally liable for corporate taxes	15
Exemption—State and County taxes—municipal industrial development board	18
Municipal—Contract motor carrier not subject to license	23
Tax sale of life estate	43

TRACTORS

Not necessary to assess and pay ad valorem tax before applying for gasoline tax refund	37
--	----

—V—

VENDING MACHINES

Licenses—penalty for delinquents	25
--	----

—W—

WORDS AND PHRASES

"Pulpwood Chips" are pulpwood -----22

"Streets" include gutters, sewers, **water mains**,
sidewalks, etc. -----47

WORKMEN'S COMPENSATION

Circuit Clerk's fees in settlement cases -----41